

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

75-1360

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U.S. COURT OF APPEALS
SECOND CIRCUIT

In The
United States Court of Appeals
For The Second Circuit

UNITED STATES OF AMERICA,

Appellee.

vs.

THOMAS ZAMMAS,

Appellant.

*On Appeal from the United States District Court for the
Southern District of New York*

APPELLANT'S APPENDIX

Volume II, pp. 301a - 600a

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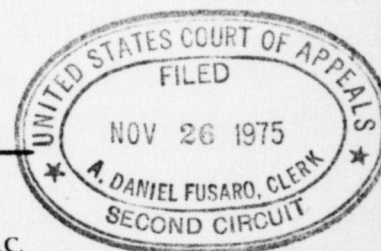
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1 hpb-16

Aiken-cross

2 THE COURT: Read the record, Mr. Reporter.

3 (Record read.)

4 THE COURT: You don't have to do that. If
5 you put a question to the witness, put a question to the
6 witness and don't comment as you go along.

7 MR. ENTIN: I apologize.

8 Q Mr. Aiken, when did you have this conversation
9 with Mr. Zammis that you didn't have any information on
10 Power Conversion?

11 A You mean the meeting at La Fortuna?

12 Q Yes. You testified yesterday to everything
13 that went on in that meeting, and you never once mentioned
14 that you asked him to provide you with research on the
15 company.

16 A I was never asked the question.

17 Q Mr. Lowe asked you specifically to recount the
18 conversation. Did you just forget that part?

19 A It must have slipped my mind yesterday, yes.

20 Q Did you ever tell it to a grand jury?

21 A Not that I recall.

22 End 3A

23

24

25

t3b

1

hpal

Aiken-cross

272

2

Q As a matter of fact, did you ever tell us

3

about the plain brown envelope until you walked into

4

court here today?

5

A Not until you asked me a question, no.

6

Q So you got a plain brown envelope. What

7

was in this plain brown envelope?

8

A As I recall, it was a Xerox of a Business

9

Week article.

10

Q Xerox of a Business Week article. And what

11

else?

12

A A report from D. H. Blair, a report from

13

Walters, Yeckes, and probably four or five press releases.

14

Q I show you Defendant's Exhibit for identifi-

15

cation A and see if you can identify it.

16

A This is a copy of the Business Week article

17

I was talking about.

18

MR. ENTIN: Any objection to this?

19

MR. LOWE: I assume it is not for the

20

truth of the article but simply that it is an article,

21

and on that basis I have no objection.

22

(Defendant's Exhibit A was received in evi-

23

dence.

24

Q I ask you if you can identify this, Exhibit

25

C.

1 hpa2

Aiken-cross

2 A This looks like a copy of the broker's
3 report from Blair.

4 THE COURT: This is C now. What was
5 that document?

6 MR. ENTIN: D. H. Blair report, and Exhibit
7 A is the Business Week report.

8 MR. LOWE: Assuming it is not offered
9 for the truth of the contents and simply represents
10 that it is a report, I have no objection.

11 MR. BERGER: No objection.

12 THE COURT: Received.

13 (Defendant's Exhibit C was received in
14 evidence.)

15 Q I show you Exhibit D.

16 A This is a copy of the Walters, Yeckes report.

17 MR. LOWE: On the same basis, no objection.

18 THE COURT: It will be received.

19 (Defendant's Exhibit D was received in
20 evidence.)

21 Q These three articles, Exhibits A, C and D,
22 were included in this package that you received with
23 the plain brown envelope, is that correct?

24 A Copies of them, yes.

25 Q When did you receive this plain brown

hpa3

Aiken-cross

274

1 hpa3
2 envelope in relation to your meeting with Mr. Zammas?

3 A I would say within three days.

4 Q And inside also were various press releases
5 from Power Conversion, the corporation itself?

6 A Yes.

7 Q Was there in there additionally a statement
8 on new battery power systems describing the function
9 of the lithium cell battery?

10 A No, that was not there.

11 MR. ENTIN: Will you mark this, please.

12 (Defendant's Exhibit E was marked for iden-
13 tification.)

14 Q Have you ever seen this before, Mr. Aiken?

15 A No, I never have. I can't help you.

16 Q When you received the Walters, Yeckes report
17 and the Business Week article and the press release,
18 did you sit down and plagiarize these for your article?

19 THE COURT: Press releases?

20 MR. ENTIN: Yes, general press releases.

21 Q Did you sit down and plagiarize what were --

22 A Yes. It's called research, if you don't
23 get caught.

24 Q So you did no independent research?

25 A Yes, I did.

hpa4

Aiken-cross

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Q What sort of independent research did you do?

A I had a copy of the final prospectus, which is quite a bit of help, and I called a man named Rosansky at the company.

Q The president?

A Either the president or vice president.

Q Martin Rosansky?

A Yes. One of the principals.

Q And you had a conversation with Mr. Rosansky?

A Yes.

Q Who else did you talk to?

A I went to see the analyst that covers Chrom-alloy American.

Q Who was that?

A I don't remember at this stage, but the Value Line followed the company and had owned the stock in one of the funds, so there was a file.

Q Any other independent research?

A No.

Q And you pretty much adopted the conclusions and the text of the three articles that I have referred to before and placed into evidence, is that correct?

A That would be correct, yes.

1 hpa5

Aiken-cross

2 Q And what these articles say about the
3 company, is in these articles, it is what is in your
4 article, is that correct?

5 A Yes, you could logically expect it was taken
6 from there or the prospectus.

7 Q Do you know Walters, Yeckes & Gallant by
8 reputation?

9 A Yes, I do.

10 Q What is their reputation?

11 MR. LOWE: I object to that. I don't
12 see that it is of relevance.

13 THE COURT: What is the relevance?

14 MR. ENTIN: Mr. Lowe has argued to the
15 jury this man was paid for writing a favorable article.
16 He has plagiarized them from different articles. If
17 these are responsible, it dents Mr. Lowe's position, be-
18 cause all this man did was copy these; he wrote nothing
19 of his own.

20 MR. LOWE: That doesn't mean it is unfavor-
21 able.

22 THE COURT: The objection is sustained.

23 Q From the time of the meeting at LaFortuna
24 to the time the article went to press. how much time
25 transpired?

hpa6

Aiken-cross

277

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A I would guess at the most about 10 days.

Q Ten days, two weeks?

A Yes.

Q During this interim period of time you testified yesterday that defendant Zammass never called you, is that correct?

A During what time frame?

Q From the time you met at LaFortuna to the time you got the telephone call from him on September the 28th.

A Yes, that's true, I testified to that.

Q Isn't it a fact that Value Line Selection and Opinion had gone to press four or five days before Mr. Zammass called you?

A Press days are quite a bit in advance of publication days, that's correct.

Q As a matter of fact, isn't it also correct that Selection and Opinion was already in the process of being delivered to subscribers prior to the time Zammass had notification that an article had been written?

A That would be correct, yes.

Q So until the time Tom Zammass actually called you on September 28th he had absolutely no knowledge that you had written an article for Value Line

hpa7

Aiken-cross

278

Selection and Opinion, nor did he know when it would be published, is that correct?

A That would be correct.

Q And the first time he could have known this could have been on September 28, 1972, is that correct?

A That's correct, from me.

Q Had you told Stanley before then?

A No.

Q He couldn't have found out from Stanley?

A No.

Q Well, who else could he have found out from?

A I have no idea.

Q When you say "not from me," it means it is not from anybody?

A It's a 200-percon organization and, as you pointed out, they do mail starting Tuesday night, so it's not possible.

Q When you had your conversation with Mr. Zammis on September 28th, did he indicate to you at that time he knew it had already been printed?

A No, he didn't.

Q As a matter of fact, you are the one that broke the news to him?

A As far as I know.

hpa8

Aiken-cross

279

1 Q Suggested meeting and asked to get paid,
2 isn't that correct?

3 A No. I testified I couldn't make a meeting
4 with him that evening.

5 Q Did you file an income tax return in 1970?

6 A No.

7 Q Why didn't you file an income tax return
8 in 1970?

9 A Well, there isn't any really simple answer
10 to that. Having failed to file the year before, it
11 just seemed as though the situation would be worse.

12 Q Do you have an accountant?

13 A I do now.

14 Q You didn't then?

15 A No.

16 Q Isn't it a fact the reason you failed to
17 file an income tax return in 1970 is because you had
18 received undisclosed compensation to your employer and
19 didn't want to record it?

20 A That's not true. That wouldn't make me
21 nervous because my employer doesn't submit income tax
22 returns and in prior years I had recorded moderate to
23 substantial amounts of free-lance income.

24 Q Did you file a return in 1971?

hpa9

Aiken-cross

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A No, I did not.

Q And the reason was: Gee, you forgot in '69 and '70, and therefore '71 would just compound a felony?

A That's correct.

Q That was also the same reason you didn't file a return in 1972, is that correct?

A Correct.

Q With regard to all the gratuities you received in '69, '70, '71 and '72 no withholding was ever taken from those, was there?

A That's correct.

Q You never made an estimated tax payment on those, did you?

A I never did.

Q Isn't it also a fact, for the purposes of this jury, that you didn't want to get yourself in more serious water by not wanting to report income you received?

A The tax man doesn't seem to care where the income comes from as long as you report it. I think we all know there is an end to these trails.

Q Pardon me?

A I think we all know there is an end to this kind of trail.

hpa10

Aiken-cross

281

1 Q That came in '73, didn't it?

2 A Yes, sir.

3 Q In '73, when you were confronted with all
4 of this, did you get yourself indicted for failure to
5 file tax returns?
6

7 A I was not confronted with anything, Mr.
8 Entin. I went down to Peter Schaeffer and told him
9 the story.

10 Q You did so voluntarily?

11 A That's correct.

12 Q But you didn't tell him the whole truth,
13 did you?

14 A I told him the whole truth about Power Conver-
15 sion, which was -- and another stock, Endicon, which
16 was currently at issue.

17 Q But you didn't tell him about anything else?

18 A No, not that I recall.

19 Q You were covering to protect friends?

20 A Covering to protect friends?

21 Q You were protecting Stanley, weren't you?

22 A I was trying to limit my liability.

23 Q Why, you were afraid for your life?

24 A I wasn't afraid for my life.

25 Q What do you mean by limiting your liability?

hpall

Aiken-cross

282

1 A If you can confess to two crimes instead
2
3 of 10 or 12, it seemed like a good idea at the time.

4 Q And it was your feeling at the time if you
5 could tell these half truths you could get away with
6 it better in the end and it would work out better?

7 A Not half truths; tell part of the truth to
8 two specific situations.

9 Q Didn't it go beyond that? Didn't Mr. Lowe
10 ask you, "Mr. Aiken, isn't there anything else?" and you
11 said, "No, Mr. Lowe, there isn't anything else"?

12 A It did go beyond that, yes.

13 Q And when you said to him there sure isn't
14 anything else, you were lying, correct?

15 A That's correct.

16 Q And you lied for the sole purpose of limiting
17 your liability, is that correct?

18 A Yes, that's correct.

19 Q In your agreement with the United States
20 Government which has been presented into evidence, placed
21 in the court file in this particular case, isn't it a
22 fact that your cooperation with the government will be
23 made known at the time of your sentencing?

24 A I hope so.

25 Q And you hope by your testimony to be limiting

hpal2

Aiken-cross

283

your liability, do you not?

A That is correct.

Q Have you ever heard of a stock known as Autotrain?

A Yes, I have.

Q When did you first hear of this stock?

A It was brought to my attention, I think, some time in 1971.

Q Who was it brought to your attention by?

A A man named Henry Winkler.

Q Of Executive Securities?

A That's correct.

Q And through Henry Winkler you met Stanley Perlmutter?

A Yes.

Q Did you do an article on Autotrain?

A Yes.

Q For Selection and Opinion?

A I did indeed.

Q At that time was when you commenced your business relationship with Stanley Perlmutter, is it not?

A After that time, yes.

Q Isn't it a fact that you had a significant

hpal3

Aiken-cross

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beneficial interest in the Autotrain deal and when Mr. Perlmutter was able to achieve his profit he shared same with you?

A Absolutely not.

Q That's not true?

A Absolutely not.

Q If we were told otherwise, that wouldn't be true either?

A That's correct.

MR. ENTIN: I would like to have this marked as Defendant's Exhibit F.

Q First, can you identify this as your article?

A Yes.

Q This is your article?

A Yes, it is.

(Defendant's Exhibit F was marked for identification.)

MR. LOWE: On the same basis as the other articles and reports, I have no objection.

THE COURT: Any other objection?

MR. BERGER: No objection.

THE COURT: Let it be received.

(Defendant's Exhibit F was received in evidence.)

hpa

Aiken-cross

285

Q Did you have an interest in that stock, if not with Stanley Perlmutter, with Hal Winkler of Executive Securities?

A No, I did not.

THE COURT: At this time we are going to take our morning recess. The jury is excused for 10 minutes.

Please remain seated while the jurors are leaving the courtroom.

(The jury left the courtroom.)

THE COURT: The witness is excused for 20 minutes and the lawyers are excused.

(Recess.)

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RMA

Aiken-cross

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(In open court; jury present.)

THE COURT: All right, you may continue,
Mr. Entin.

We are going until 1 o'clock today and will
recess for lunch until 2:30.

BY MR. ENTIN:

Q With regard to Autotrain, was Henry Winkler
involved with this stock, in any manner?

A Yes, he was president of the broker's firm
that brought it public.

Q You had had other business dealings with
Hal Winkler, had you not, prior to the publication of
the article on Autotrain?

A I don't think I had had business dealings
with him to that point.

Q Did you have any business dealings with
Hal Winkler based upon the Autotrain situation?

A No, nothing out of the routine or honest.

Q Isn't it a fact that Hal Winkler and/or Stanley
Perlmutter, with regard to Autotrain, gave you a bene-
ficial interest in approximately 5000 shares at \$10 a
share?

A No, that is not true.

Q And if anybody indicated that it was true,

rma

Aiken-cross

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they would not be candid?

MR. LOWE: Objection. Speculation,
your Honor, "if anyone."

THE COURT: Yes, sustained.

Q Are you acquainted with a company or a
stock known as Building & Land?

A I am familiar with Building & Land Technology.

Q When did you first become acquainted with
this stock?

A A public relations agent brought it to my
attention.

Q Who was the public relations agent?

A A man named Mark Goroff, G-o-r-o-f-f.

Q How did he bring it to your attention?

A Just in the normal course of business.

Q You never heard of this stock from Stanley
Perlmutter?

A No.

Q Did you ever have any conversation with
Stanley Perlmutter with regard to this stock?

A Nothing substantive that I remember.

Q And you made no deal with regard to the
stock in Building & Land?

A That's correct.

rma

Aiken-cross

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MR. ENTIN: Please mark these?

(Defendant's Exhibit G was marked for identification.)

Q I ask you if you can identify these articles (handing).

A Yes, I can.

Q Were they written by you?

A Yes, they were.

MR. ENTIN: I would like to move these into evidence, Mr. Lowe.

MR. LOWE: As offered on the same basis as the other articles and reports, I have no objection.

(Defendant's Exhibit G was received in evidence.)

Q Is it your testimony, Mr. Aiken, that you received no consideration, be it cash, stock or beneficial interest in the corporation Building & Land for which you wrote this article?

A That's correct.

Q When did you first meet Herb Trassenfeld?

A Oh, probably in 1969 or '70.

Q Was he a good friend of yours?

A Yes.

Q Was he a friend of yours like Stanley Perl-

rma

Aiken-cross

289

mutter?

A He was more of a personal friend.

Q He was a broker, was he not?

A Yes, that's correct.

Q Did you ever give Herb Trassenfeld advance information on articles that were to be done in Selection and Opinion?

A Once in a great while I would, yes.

Q Did you receive any kind of remuneration from Trassenfeld for providing him with this information, be it stock, be it cash, be it a beneficial interest in stock, be it a gratuity of any kind?

A The agreement was that I might, but I never did, no.

Q In other words, you had an agreement that you might receive consideration from Trassenfeld but you never asked for it and he never gave it to you?

A That's correct.

Q So when you did certain articles on companies that Trassenfeld was interested in, although there might have been a payoff and one might have been contemplated, it never really occurred, is that correct?

A That's correct.

Q Did Trassenfeld ever speak to you about the

rma

Aiken-cross

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possibility of you and he working together and doing articles on various companies for which you both took profit?

A Yes.

Q You did have these conversations with him?

A Yes.

Q Isn't it a fact that you had one of these conversations with him with regard to the stock of Basic Food Industries?

A Yes, we could have.

Q You did have a conversation with him.

Now, Basic Food, that is a public company and the president of that company is Allan Appelstein of Miami?

A Yes.

Q You have met Allan Appelstein, have you not?

A Yes, I have.

MR. ENTIN: Please mark this for identification, please.

Q Allan has his main offices, does he not, in Miami?

A Either there or very close to it, as far as I know, but whenever I met him it was in the Plaza Hotel.

rma

Aiken-cross

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(Defendant's Exhibit H was marked for identification.)

Q Can you identify this article for me, please, Mr. Aiken (handing)?

A Yes. It is an article about the broiler industries, chickens.

Q That is what Basic Food was into?

A At the time, yes, they were in the chicken business.

Q And the article in here does concern them in various ways?

A Well, there is another company or two in there, as I remember.

MR. LOWE: On the same basis as the other articles, I have no objection.

MR. BERGER: No objection.

(Defendant's Exhibit H was received in evidence.)

Q Did you know Herb Trassenfeld's association with Allan Appelstein?

A Yes. They went to Harvard Law School together.

Q And they were also very friendly, were they not?

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Aiken-cross

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A Absolutely not.

Q Oh, they were not friendly.

A Trassenfeld doesn't like Appelstein very much.

Q Today or back then?

A Back then.

Q Isn't it a fact, to your knowledge, that Trassenfeld had a very large position in Basic Foods, which was Appelstein's company?

A I was told he did, but I have no personal knowledge of it.

MR. LOWE: I move to strike on the grounds it is hearsay.

THE COURT: Yes. He said he had no knowledge, hearsay, and it is therefore stricken?

MR. ENTIN: Your Honor, I offer it as the state of mind of the witness.

THE COURT: In what connection?

MR. ENTIN: May I approach the side bar?

THE COURT: Yes.

(At the side bar.)

MR. ENTIN: Your Honor, I am offering it for state of mind and not for truth, and that if the witness believed his friend Trassenfeld had a large posi-

rma

Aiken-cross

293

1 tion and they had an unwritten agreement which he says
2 he was never paid on, it would be to his interest to
3 do the article on Basic Foods. It goes to his state
4 of mind and not whether or not Trassenfeld had the posi-
5 tion.
6

7 THE COURT: You are trying to bring out
8 he believed Trassenfeld had a basic position in this
9 company?

10 MR. ENTIN: Yes, which led him to do an
11 article to help his friend, for which he could have
12 received compensation, based upon the agreement he testi-
13 fied to.

14 MR. LOWE: I think he has already said
15 everything you are trying to prove. He sa'l he knew
16 the guy, said he was his friend, said he wrote the
17 article, that he had an understanding that some day down
18 the road he might get something, but he never got any-
19 thing.

20 THE COURT: Who is Trassenfeld? Why
21 should he have felt good about Trassenfeld having a
22 substantial interest?

23 MR. ENTIN: He testified Trassenfeld was
24 his friend, that Trassenfeld was a stockbroker, that
25 he and Trassenfeld had conversations whereby if he

rma

Aiken-cross

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published articles for which Trassenfeld received consideration, that it could be shared.

He has denied he has ever shared in anything, but he agrees that the agreement existed that he could share. Your Honor has, by granting his particular motion to strike as hearsay, eliminated from the jury's consideration the fact that it was in his mind that Trassenfeld had a large position and as such would eliminate the rationale I am trying to establish for his writing the article (a) to help his friend, a stockbroker, and (b) to possibly collect on the deal he had with his friend.

THE COURT: On that basis I will allow it.

(In open court.)

MR. ENTIN: Would you please repeat the last question I asked.

THE COURT: You may repeat the question and answer, and it will not be stricken, as previously ruled.

(Record read.)

THE COURT: Previously, ladies and gentlemen, the government moved to strike that answer on the ground that it was hearsay. That ruling is reversed

rma

Aiken-cross

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1 and the answer is now in the record, and although it
2 is hearsay it is permitted to show what this witness'
3 state of mind might have been. It is not offered for
4 the truth of what was said but to show what may have
5 motivated this particular witness.
6

7 With that understanding, let's proceed.

8 Q Based upon what you believed, did you then
9 write this article which dealt with Basic Food Industries
10 in which you recommended purchase of the stock?

11 A No, it wasn't based on that consideration
12 at all.

13 Q And it wasn't based on the fact that Herb
14 Trassenfeld was your friend?

15 A No, not to any great extent. The price of
16 corn was coming down, as I remember, which is what
17 chickens eat.

18 Q And the fact that this might benefit your
19 friend and possibly be a benefit to you had no relevance?

20 A Not at the particular time, no. I
21 I also recommended another chicken company,
22 as I remember, in that article.

23 MR. ENTIN: Please mark these as separate
24 exhibits.

25 (Defendant's Exhibits I and J were marked

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for identification.)

Q Just a moment ago, when I was chatting with you about Autotrain, you had indicated that at the time of Autotrain you had had no prior business dealings with Hal Winkler, is that correct?

A I said I didn't recollect if they were before or after.

Q Well, what did you have that you might recollect that was before?

A Oh, okay, Imperial Industries.

Q So at the time of Autotrain you had already dealt with Hal Winkler?

A Yes, I had.

Q What is the date of that article?

A October 16, 1970.

Q What is the article about?

A It is a report on a recommendation of Imperial Industries.

Q And you dealt with Hal Winkler in this particular issue?

A That's correct.

Q And you received a gratuity from Hal Winkler of some nature with regard to this stock?

A Yes, I did.

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Q And you published this article for Hal in Executive Securities, is that correct?

A That's correct.

MR. ENTIN: I would like to move that in.

MR. LOWE: No objection on the same basis as the others.

(Defendant's Exhibit I was received in evidence.)

Q Can you identify this?

A Yes, I can.

Q What is that, sir?

A It is a general roundup article on Florida-based stocks.

Q Is Autotrain included in there?

A No, I don't see it.

Q Do you recall, Mr. Aiken, that the date of the Autotrain article was nearly several months later, in 1971?

A It was in July, wasn't it?

Q Yes, sir -- pardon me, it was June 25, 1971, a significant period of time after the Imperial Industries article, isn't that correct?

A All right, my dealings with Winkler had slipped my mind.

rma

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2 Q Did it also slip your mind that you had a
3 deal with Winkler on Autotrain?

4 A No.

5 Q Do you mean to tell me that once you had been
6 able to go to the trough with somebody and work out a
7 deal for your financial benefit you didn't come back
8 a second time and demand the same deal?

9 MR. LOWE: Objection. Argumentative.

10 THE COURT: Yes. Sustained.

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Q You received no beneficial interest in Auto-train through Winkler?

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MR. LOWE: Objection, asked and answered.

5

MR. ENTIN: He has indicated his recollection was somewhat poor on this issue, your Honor.

6

7

MR. LOWE: To the contrary, he has flat out denied receiving anything from anyone for Autotrain.

8

9

THE COURT: Is that so, Mr. Entin?

10

MR. ENTIN: I withdraw the question, your Honor.

11

Q You testified earlier today that you received on Casa Bella an initial \$1000 from -- was it Henry or Burt Dubin?

12

13

14

A Burt. Henry is the father.

15

Q Then later on you received probably three or four thousand dollars more in cash before the forgiveness for the introduction to Silbiger.

16

17

18

A That is correct.

19

Q Do you recall having a conversation in, oh, October of 1974 with John Loe and Pete Shaeffer of the Securities and Exchange Commission?

20

21

22

A October of '74?

23

Q That is correct, in Mr. Lowe's office -- pardon me, in Room 308 of this courthouse, at about 3:20 in the afternoon, when you discussed with Mr. Lowe and Mr.

24

25

rmb-2

Aiken-cross

Shaeffer Casa Bella Imports.

A Yes.

Q And at that time --

A I don't recall that it was October.

Q You recall a conversation with them?

A I recall being with John Lowe, but if it was October of '74 Peter Shaeffer certainly wasn't there. I could be wrong about this.

Q So you don't recall meeting with Lowe and with Shaeffer and telling them that you finally got an additional thousand dollars as a part of the payoff from Burt Dubin in cash in about October of 1971?

A You are saying I had a conversation with Peter Shaeffer and John Lowe in October of 1974?

Q That is correct. At that time you told them you only received an additional thousand dollars from Dubin and not the three or four thousands you testified to here today?

A I don't recall meeting with them, both together, in October of '74. At that time I am sure I had meetings with John Lowe. Are you sure it isn't '73?

MR. ENTIN: The 3500 material I received from Mr. Lowe shows a date of '74.

THE COURT: Well, you could show it to him and

1 rmb-3

Aiken-cross

2 ask him if that refreshes his recollection.

3 Q Let me show you what purports to be a memorandum
4 of that meeting (handing).

5 MR. LOWE: Your Honor, the Government will
6 stipulate that the meeting took place -- obviously the
7 witness can't remember the dates, but we have a record of the
8 fact that it took place and I will stipulate that a meeting
9 as represented by that document took place and that Mr.
10 Shaeffer and I were there.

11 A Okay, you know, I just don't have any absolutely
12 clear recollection of all the meetings with John Lowe.

13 Q There have been several?

14 A More than several.

15 Q Do you recall telling Mr. Lowe that all you
16 received additional from Burt Dubin was \$1000?

17 A I don't recall saying that, no.

18 Q If it says in here that all you told him about
19 was \$1000, that wouldn't be true?

20 A Well, it was at least two or three thousand
21 dollars and perhaps four.

22 Q So if it says in here that you told him all you
23 got was an addition \$1000 you didn't tell the truth at
24 that meeting, is that correct?

25 A That would be incorrect, right.

rmb-4

Aiken-cross

Q But you are telling the truth now?

A Yes, I am. You see, subsequent to that meeting I went over all my accounts with an accountant to file income taxes, so the numbers are now within a reasonable sphere of accuracy.

Q When you appeared before the Securities and Exchange Commission in Philadelphia, did you testify to them that you didn't take any form of cash compensation at any time for any stock from Jack Silbiger, either of the Dubins, Larry Richter or any of those persons?

A That is correct.

Q You told them, in June of 1974, five months before this meeting with Mr. Lowe, that you had taken no money whatsoever?

A That is correct.

Q And then five months later you said you took a thousand dollars, is that correct?

A That seems to be correct.

Q So you didn't tell the truth in Philadelphia on that point either?

A As I have stated, that is correct.

MR. LOWE: I wonder if I could ask Mr. Entin to point to the specific section of the Philadelphia transcript to which he has reference at this point?

rmb-5

MR. ENTIN: Yes, sir, that is page 132, Mr. Lowe,
line 15.

"Q Mr. Aiken, you have testified that you didn't take any form of cash compensation from Silbiger, Dubin, Mr. Richter, and so forth concerning the Magic Marker Corporation or any other stock.

"A That's right."

Q I mentioned to you earlier a stock by the name of Hills Brothers. Do you recall that stock?

A Yes.

Q Was that stock also promoted by Hal Winkler of Executive Securities?

A Well, would you define the word "promoted"?

Q Was his company handling a significant position of that stock?

A I have no knowledge of that. I think they
were the underwriters.

Q Did you do an article on Hills Brothers?

A Yes.

Q Did you receive any compensation from Winkler?

A No.

Q Or Stanley Perlmutter, either directly or indirect with regard to the stock of Hills Brothers?

A No, I did not.

rmb-6

Aiken-cross

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Q Are you acquainted, sir, with a corporation known as R.H. Medical?

A Yes, I am.

Q Have you done articles on R.H. Medical for Value Line Magazine?

A I did not write that article.

Q Pardon?

A I did not write that article.

Q Well, there were several. Did you write any of the articles?

A No, I did not.

Q Who wrote the articles on R.H. Medical?

A A man named Harris Behrenholtz.

Q What was his position with Value Line?

A A securities analyst.

Q Why did he do the articles on R.H. Medical?

A He found the situation.

Q And did he write the articles?

A That is correct.

Q Who found the situation on Alexander's, Incorporated, an article done in September of 1970?

A Milton Shlein.

Q Getting back to the 900 shares of stock that you received as security from Mr. Zammass, if I were to ask

1 rmb-7

Aiken-cross

2 you whether you recall receiving the stock on a street
3 corner from Mr. Zammass, a day or so after the article date,
4 September 29, would it serve to refresh your memory as
5 to when you received those stock shares?

6 A No, I don't think so.

7 Q Did you ever have a meeting in September of
8 1972 with Mr. Zammass on a street corner approximately one
9 block from Value Line?

10 A No, not to the best of my recollection.

11 Q Does that mean no or --

12 A It means no.

13 MR. ENTIN: Your Honor, may I have a moment
14 to confer with my client?

15 THE COURT: Yes.

16 (Pause.)

17 Q One last question, Mr. Aiken. Do you recall
18 a stock by the name of Ecology, Inc.?

19 A I do recall it, but very vaguely, and I think
20 we call it by the wrong name when we published it.

21 Q Does the name I.P. Keller have anything to do
22 with the stock Ecology, Inc.?

23 A It has no meaning to me. Is it a company?

24 Q I asked if it has any meaning to you.

25 A It has no meaning to me.

1
2 Q You testified that you forgave a twenty-some odd
3 thousand dollar debt to the Dubins for an introduction to
4 Jack Silbiger with regard to the Magic Marker situation.

5 A No, what I testified is, I forgave my share of
6 the proceeds of that stock deal to Burt Dubin in return
7 for introducing me to Jack Silbiger.

8 Q What was to be your share that you so kindly
9 forgave?

10 A I beg your pardon?

11 Q What was to be the share that you so kindly for-
12 gave?

13 A It wasn't a matter of kindness, I was just being
14 practical.

15 Q How much money was involved?

16 A About \$5000, at that point.

17 Q What did Jack Silbiger do for you that was
18 worth \$5000?

19 A Eventually I wrote up a stock for him and was
20 paid in cash.

21 Q That was Magic Marker?

22 A Yes.

23 Q How much were you paid in cash for that?

24 A \$20,000.

25 MR. ENTIN: Nothing further.

rmb-9

Aiken-cross

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THE COURT: Any cross-examination, Mr. Berger?

MR. BERGER: Yes, your Honor.

CROSS-EXAMINATION

BY MR. BERGER:

Q Mr. Aiken, my name is Mr. Berger, and I represent Mr. Rodman.

Getting back to this first meeting, between you and Mr. Zammis at the La Fortuna Restaurant, you testified that that occurred some time in September of 1972, is that correct?

A That is correct.

Q Would that be approximately in the middle of September?

A Yes.

Q Around the 14th or 15th of the month?

A Yes, around that.

Q Prior to that time had you had any discussions with Mr. Zammis concerning Power Conversion stock?

A No, I had not.

Q Therefore, prior to that time you could not have discussed with him placing a certain number of shares of Power Conversion stock up with you as collateral, could you?

A Could you repeat that? I am not sure I under-

rmb-20

Aiken-cross

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stand what you are asking.

Q I will repeat the question a different way.
Am I correct that the first time you discussed placing
any Power Conversion stock with you as collateral occurred
at that first meeting?

A Yes, that is correct.

Q And that was in September, middle of September,
1972?

A Yes, that is correct.

Q What time of day or evening did that meeting
take place?

A Some time between 5:00 and 6:00, and probably
went on for a couple of hours.

Q Where is the La Fortuna Restaurant located?

A It is on East 41st Street, right opposite the
library.

Q That meeting took about two hours?

A At a rough estimate, yes.

Q Did you request that Mr. Zammis place this stock,
Power Conversion stock, as collateral with you at that time?

A I think it was offered. I didn't request it,
but I accepted the offer.

Q That was the first time that had ever been
discussed, though, is that correct?

b-11

Aiken-cross

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A Yes, sir.

Q You testified that you went to an apartment, is that correct?

A That is correct.

Q Where was that apartment located?

A 35th, on Lexington Avenue.

Q Were you continually with Mr. Zammas from the time of that meeting to the time that you went to the apartment on 35th Street and Lexington Avenue?

A Yes.

Q During that period of time did he speak to anyone other than you and Mr. Perlmutter?

A Not so far as I know.

Q This apartment on 35th Street and Lexington Avenue, can you describe it?

A It looked like a New York apartment.

Q About how many rooms was it made up of?

A I would estimate it was either a one-bedroom or perhaps a two-bedroom apartment. All I was in was the living-room and the kitchen.

End 4B

Tk 5A

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hpb-1

Aiken-cross

310

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Q And do you know whether any other people were in the apartment while you were there?

3

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A The only person I knew while I was in the apartment was Goldfarb.

5

6

Q You didn't see Mr. Rodman in the apartment, did you?

7

8

A No, I didn't.

9

10

Q Now, at that time you say you were given 900 shares of Power Conversion stock, is that correct?

11

A That is correct.

12

13

Q And you testified that that stock was in a street name, is that correct?

14

A Well, that's a phrase, yes, as far as I know.

15

Q What exactly is stock in a street name?

16

17

A Its street name would indicate that the broker was, you know, performing the custodial service, but it could be sold because his signature guarantees delivery slips.

18

19

Q Actually this stock was not in the broker's name. It was in the name of William Rodman in trust for his three children, isn't that correct?

20

21

22

A Yes. I will stipulate that I am not an expert on that side of the brokerage business. I was informed that it was salable stock.

23

24

25

Q In other words, that the stock was negotiable?

1 hpb-2

Aiken-cross

2 A Negotiable, right.

3 Q There is no way to tell from that stock, as
4 far as you know, from whom Mr. Zammass may have acquired that
5 stock, is there?

6 A Not to my knowledge, no.

7 Q And if you would have given that stock to
8 somebody else, they would have kept it in that form and it
9 would have been negotiable also, isn't that true?

10 A That was my understanding.

11 Q Wasn't it your understanding also that that
12 stock could have been held by many people prior to the time
13 it was given to you and still be in negotiable form?

14 A I don't really know. You mean it could have
15 passed through hands?

16 Q Yes.

17 A Yes, that's certainly possible so far as I know.

18 Q You could have delivered it in the form it was
19 in, isn't that correct?

20 A Delivered it or handed it over, certainly.

21 Q Whoever you gave it to could have given it
22 to somebody else, isn't that correct?

23 A That is certainly possible.

24 Q And it would always stay in that form, is that
25 correct?

hpb-3

Aiken-cross

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2 A Yes.

3 Q When you were at the apartment, you didn't
4 hear Mr. Zammas speak to Mr. Rodman, did you?

5 A No.

6 Q And Mr. Rodman never contacted you and asked
7 for a return of his stock, did he?

8 A No.

9 Q Are you familiar with the general workings
10 of Wall Street?

11 A Generally.

12 Q Would I be correct in stating that Wall Street
13 is a rumor mill?

14 MR LOWE: I will object to that.

15 Q If you know.

16 THE COURT: What is the objection, o- the
17 ground of relevance?

18 MR. LOWE: Yes, your Honor.

19 MR. BERGER: May I approach the side bar.

20 THE COURT: Yes.

21 (At the side bar.)

22 MR. BERGER: Your Honor, there is going to be
23 an issue in this case as to from whom did Mr. Rodman
24 learn, if he did learn, that there may have been a payoff
25 or from whom other people who may come up to testify might

hpb-4

Aiken-cross

1
2 have learned that there was some sort of payoff. All I am
3 trying to show is that Wall Street has the type of business
4 in which rumors of this type or other types run rampant and
5 as a matter of fact stock moves on rumor and if he knows
6 I would like to get that into evidence through him rather
7 than call in a Wall Street broker, just to save time.

8 THE COURT: You say there will be evidence
9 that Mr. Rodman learned that this witness received a payoff
10 or bribe?

11 MR. BERGER: I believe there will be witnesses
12 who claim that Mr. Rodman told them that Value Line was
13 coming out with an article and I want to be able to
14 argue to the jury that if Mr. Rodman did tell any witness
15 such a thing he didn't necessarily have to get that from
16 Mr. Aiken or from Mr. Zammis, but that this type of rumor
17 would run rampant on Wall Street, Wall Street is a rumor
18 mill.

19 MR. LOWE: I don't object to questions as
20 to what was known on the street, but just to say a rumor,
21 that is too broad and vague.

22 MR. BERGER: That is a saying on the street.
23 If he knows it, I mean it is something that is said about
24 Wall Street. It is people on the street who refer to
25 it that way. If he never heard of it, he can say no.

hpb-5

Aiken-cross

THE COURT: I will let you ask the question.

MR. LOWE: Your Honor, my problem is, the definition of rumor is really impossible. We have 12 laymen listening in this case. I think it only fair to the jury to point out what you are driving at, that stories spread through --

MR. BERGER: I am.

MR. LOWE: But to just start with a general vague leading, is objectionable, I think.

MR. BERGER: The only reason I use the expression is that that is the expression used on the street. I can call in an expert to testify, but that is silly.

THE COURT: Let's proceed.

(In open court.)

Q Have you ever heard the expression that Wall Street is a rumor mill?

A Yes, I have.

Q As a matter of fact, haven't you heard that stocks move up on rumor? Have you ever heard that said?

A Yes, they certainly do move up on rumor.

Q Have you ever received phone calls from brokers asking you about certain rumors on the street?

A Certainly, yes. That is routine.

Q It is routine. Value Line -- withdrawn.

hpb-6

Aiken-cross

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1 I would like you to describe step by step
2 how an article was published at Value Line, starting
3 with just the submission of the proposal, let's say, to
4 you. After you take it under consideration, what is the
5 next thing that occurs?
6

7 A All I can tell you is how they were published
8 when I was executive editor.

9 Q That is what I would like to know.

10 A I can't give you a universal guide to how
11 articles were published. You tell me what kind of article.
12 I mean, there are many different kinds of articles as
13 there are many different kinds of stocks.

14 Q Let's stick to the article on Power Conversion,
15 or articles of that type, while you were there at the
16 publication.

17 A There weren't too many articles of that type.
18 There wasn't any step by step. If there was a situation
19 of that nature in my possession as, you know, the almost
20 final word, I would take whatever material I would gather
21 and that included written material, phone interviews,
22 press releases, whatever I could get my hands on, perhaps
23 talking with other analysts on the street and I would sit
24 down at the typewriter and write it.

25 Q When you were collecting this material, you

hpb-7

Aiken-cross

would speak to people that worked with you or for you and you would tell them that you want certain material or bring me a certain file, is that correct?

A I had all but half a girl working for me at the time.

Q You would speak to that half a girl?

A It would depend.

Q And therefore, prior to the time that the article was written, someone other than yourself would know that such an article was in the process of being written, is that correct?

A Well, people would know, but ordinarily no one would know until the article got into what is called galley form, the final form preparatory, after typesetting, before printing.

Q After you gathered the material, would you either write out or type out the article?

A Yes. I am an experienced journalist. I do my own typing.

Q Would you let anybody proofread the article?

A Not until it hit galley form.

Q Would you ever have anybody do any typing for you?

A The typesetter would see it, certainly.

hpb-7a

Aiken-cross

316a

Q I don't mean that typing. I mean regular
office typing, typing.

A No. As I just said, I can do my own typing.

End 5A

t5b

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hpal

Aiken-cross

317

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Q And the galley form, did you put it into

3

galley form by yourself?

4

A No. We had machine operators that did

5

that.

6

Q Where were these machine operators located?

7

A In the basement of 5 East 44th Street.

8

Q And they were employees of Value Line?

9

A That's correct.

10

Q And how many of them were there?

11

A Oh, three and a foreman.

12

Q And when these people, or any of them, were

13

typesetting, they would have some prior notice or

14

knowledge of the fact that an article might be published,

15

is that correct?

16

A Yes, of course.

17

Q After the article is typeset, what is done

18

with it?

19

A It gets kind of technical. What happens

20

is, the galley is tripped onto a board which is photo-

21

graphed and subsequently printed. It is the photo-

22

offset process, if that makes it easier.

23

Q I assume that other employees of Value

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Line or other individuals who might not be employees

25

of Value Line are involved in that additional production,

hpa2

Aiken-cross

318

step, is that correct?

A The next production step, which was the mechanical stripping of the galley on the boards, was performed by Value Line employees.

Q How many employees were involved in that type of operation?

A Well, for me, one; but for the whole company, about a dozen.

Q And these people who also have prior knowledge of the fact that an article might be published by Value Line, is that correct?

A That's correct.

Q When they got done with their work, what was the next step?

A A teamster would come in and take the boards to Trumbull, Connecticut, a truck driver would take them to Connecticut, where they were printed.

Q Therefore, the truck driver would possibly have knowledge that something --

A Not unless he had x-ray vision. They were wrapped up by that point.

Q They went to a printer in Connecticut?

A Yes.

Q And I assume the printer in Connecticut would

hpa3

Aiken-cross

319

1 have knowledge of the fact that an article was going
2 to be published by Value Line, is that correct?

3 A At that point it wouldn't be too much argu-
4 ment.
5

6 Q This whole process took approximately how
7 long, from the writing to getting to the printer?

8 A From my typewriter to the printer?

9 Q Yes, sir.

10 A Three business days.

11 Q After the printer completed his work what
12 was done with the product? Where was that delivered
13 when the printer was done?

14 A It was taken to Bergen, New Jersey for
15 distribution, mailing.

16 Q Some time between leaving Connecticut and
17 getting to New Jersey other people were involved
18 that might possibly have knowledge?

19 A I haven't got the slightest idea.'

20 Q In other words, did it go by truck?

21 A As far as I know.

22 Q The truck driver could see it if he wanted
23 to?

24 A I have no idea. I suppose he could but
25 I have no idea how they are delivered.

hpa4

Aiken-cross

320

1 Q Therefore, there was really no way for the
2 management of the Value Line to completely block leaks,
3 isn't that true?
4

5 A That's true.

6 Q And you wouldn't be greatly surprised if
7 someone on Wall Street were to learn of an article prior
8 to the time that it was published, would you?

9 MR. LOWE: I will object to the form of
10 the question.

11 THE COURT: Whether the witness would
12 be surprised? Objection to form. The witness is
13 here to testify as to facts, not speculate to what his
14 reaction might be.

15 Q Has it ever come to the attention of anyone
16 at Value Line that someone on Wall Street had knowl-
17 edge of a publication prior to its being distributed?

18 A Yes, that's correct.

19 Q And that was the result of a leak, is that
20 correct?

21 A Yes.

22 Q But in this case there was no possibility
23 of a leak prior to the date of the first meeting
24 with Mr. Zammass, was there?

25 A No.

hpa5

Aiken-cross

321

Q And that was around September 14th?

A Yes, the middle of the month.

Q So that no one could possibly have known prior to September 14th that an article was going to be printed?

A I didn't know.

Q Thank you.

And no one could possibly have known prior to September 14, 1972 whether you had been offered any gratuity for printing an article, isn't that true?

A That would be true.

Q You testified that you relied upon the reputation of Mr. Rodman with regard to the production of this article, is that correct?

A What I testified or thought I testified to is that I wouldn't go into a deal with Zammis alone.

Q But, as a matter of fact, you never had any discussions with Mr. Rodman relative to the publication of the article on Power Conversion, did you?

A That's correct.

Q Did you ever tell anyone between the dates of September 14th and September 25th that you contemplated publishing such an article?

A No, I don't recall having done so. The

hpa6

Aiken-cross

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25th was -- I'm just trying to remember if my assistant -- I had a summer assistant at the time -- would have seen it and I might have said something to my wife, but I certainly don't recall it. Of course, she wasn't my wife then.

No, I don't really believe I did.

Q What would be the earliest date that you would have told anyone who is a defendant in this case that the article would definitely be published.

A You mean what was the earliest date I could or would or did?

Q Did, that it would definitely be published, no conditions, no contingencies, that it would definitely be published?

A I told Tom Zammis on the 28th of September.

Q And that would be the earliest date?

A That's correct.

MR. BERGER: I have no further questions, your Honor.

Thank you, Mr. Aiken.

THE COURT: At this time we are going to recess until 2:30 for lunch.

The jury is excused until 2:30.

1 hpa

2 And on Friday, ladies and gentlemen, we
3 are going to recess for the day at 2 o'clock on Fri-
4 day.

5 (The jury left the courtroom.)

6 THE COURT: The witness is excused until
7 2:30, and the lawyers are excused.

8 (Luncheon recess.)
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AFTERNOON SESSION(2:30-p.m.)

(Jury not present.)

MR. BERGER: Your Honor, at the beginning of the trial I had made a motion with regard to dismissing the indictment because of selective prosecution and I stated that I would produce some evidence during the trial. I think that this should not be done in front of the jury and I would like to offer a question I would like to ask the witness relevant to that issue so that your Honor may have those facts --

THE COURT: We will take that at 4:30. Bring in the jury.

MR. BERGER: Thank you, your Honor.

(Jury present.)

THE COURT: Mr. Lowe, are you prepared to proceed with your redirect examination?

MR. LOWE: Yes, I am, your Honor. Thank you.

THE COURT: You may proceed.

W I L L I A M E R I C A I K E N resumed.

REDIRECT EXAMINATION

BY MR. LOWE:

Q Mr. Aiken, does the date September 14, 1972,

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Aiken-redirect

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1 have any particular meaning for you?

2 A No.

3 Q During the course of your cross examination
4 by Mr. Berger the date September 14th was mentioned in
5 connection with the meeting at LaFortuna Restaurant.
6 Was that the date on which that meeting took place?

7 A I have no recollection. I stipulated
8 to some time in September, possibly around mid-Sep-
9 tember.
10

11 Q But you have no recollection of the precise
12 date of that meeting?

13 A I could not say September 14th was the date.

14 Q Mr. Aiken, during your cross examination
15 by Mr. Entin he asked you whether you had ever told anyone
16 about receiving materials about Power Conversion in a
17 plain brown envelopel

18 Had you in fact prior to your testimony here
19 in court told anyone about that?

20 A Yes. I believe I told you in various
21 sessions.

22 Q In addition to telling me about it, did you
23 give us anything about it?

24 A I gave you the items.

25 Q Showing you Government's Exhibit 1C for

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Aiken-redirect

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1 identification, Mr. Aiken, can you identify what the
2 documents attached to that exhibit are?
3

4 A Yes, I can.

5 Q What are they?

6 A There is a Xerox copy of a Business Week
7 article, with my handwriting on it. There is a clip
8 from the Wall Street Journal dated August 29, 1972.
9 There is a report on the stock under the imprimatur of
10 Walters, Yeckes, and there is a D. H. Blair in my
11 handwriting -- that is a copy of that report.

12 Q Where did those specific pieces of paper
13 come from?

14 A They came in the envelope.

15 Q Did you thereafter give them to me?

16 A Yes, I did.

17 MR. LOWE: The government offers these
18 in evidence, not for their truth but simply to repre-
19 sent what Mr. Aiken received in a plain brown envelope
20 back in 1972.

21 MR. ENTIN: No objection, defendant Zam-
22 mas.

23 MR. BERGER: No objection, defendant Rod-
24 man.

25 THE COURT: They may be received.

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Aiken-redirect

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(Government's Exhibit 1C was received in evidence.)

Q How long ago did you present the documents attached to Government's Exhibit 1C to the government?

A I believe shortly after I came in to see you the first time.

Q Well before today?

A Well before today.

Q Also on your cross examination by Mr. Entin he asked you about what you had testified to under oath about money you received from Mr. Dubins in connection with that Casa Bella deal. Do you recall being asked about that by Mr. Entin?

A Yes, I do.

Q Do you recall being asked these questions and giving these answers in the grand jury on May 21, 1973, and I refer to page GH-8 of that transcript:

"Q Now, Mr. Aiken, prior to the fall of '72 and prior to anything to do with Power Conversion, there was another instance I believe you previously told us you had received some money in connection with doing a writeup.

"A That's correct.

"Q Was the name of the stock involved Casa

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1 Bella Imports?

2 "A Yes.

3 "Q Would you spell that?

4 "A C-a-s-a B-e-l-l-a.

5 "Q What specific individual or individuals were
6 you involved with at that time in connection with that
7 company and the money paid to you to do the writeup of
8 that company?
9

10 "A Zammas had set up that deal at the time.
11 He was executive vice president of Canaveral International,
12 a land company listed on the American Stock Exchange.
13 The son of the chairman of the board of that company
14 was setting up a furniture importing chain and the com-
15 pany was in operation and had not gone public, and
16 for \$3000 I did a new issue review on the stock.

17 "Q From whom did you receive the \$3000?

18 "A It came from Burt Dubin, who was chairman
19 of the board of Casa Bella.

20 "Q And the meeting you had with Burt Dubin
21 was arranged by Mr. Zammas?

22 "A Yes."

23 Do you recall being asked those questions
24 and giving those answers back on May 21, 1973?

25 A Yes, I do.

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Q Were they the truth at the time?

A Yes, they were.

Q Also during your cross examination by Mr. Entin, Mr. Entin asked you about the fact that you had entered into an oral agreement with the government back in March or April of 1973, is that right?

A That's correct.

Q Prior to that time, prior to the time you entered into an agreement with the government, had you had any conversations with any representatives of the government of the United States regarding the transaction about which you have testified here today, specifically, Power Conversion?

A I talked to Peter Shaeffer of the SEC.

Q Was that prior to your talking to anyone from the Justice Department, specifically, anyone from the United States Attorney's Office?

A That's correct.

Q When you spoke to Mr. Shaeffer of the SEC, was anything said about what would be done for you in return for your talking to them?

A No. He said he wasn't in a position to offer anything along those lines.

Q Thereafter you spoke to the United States

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Aiken-redirect

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Attorney's Office, did you not?

A That is correct.

Q And at that time an agreement was entered into orally?

A Orally, yes, sir.

Q And that provided that you would plead guilty to one count of fraud in connection with the Power Conversion deal and you would not be prosecuted on the Casa Bella deal or one other deal about which you told us, is that right?

A That's correct.

Q And subsequent to that time you were confronted with evidence that you had not told the truth to the United States Attorney's Office, is that correct?

A That's correct.

Q What happened at that time?

A The deal got quite a bit worse.

Q Tell us exactly how it got worse?

A It quadrupled. In other words, I would have to --

MR. ENTIN: I object. The present agreement is in evidence and speaks for itself.

MR. LOWE: Very well, I will withdraw the

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Aiken-redirect

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question.

Q What is your understanding of what will happen to you if you lie here in court today, or yesterday, or tomorrow?

A The U. S. attorney will prosecute me for everything I have ever done.

Q Do you have any doubt that is exactly what will happen?

A No doubt whatsoever.

MR. ENTIN: Objection. I move to strike that response as being irrelevant.

MR. LOWE: I think it is highly relevant, your Honor.

THE COURT: Yes, I think so.

MR. LOWE: I have no further questions.

THE COURT: Anything further?

MR. ENTIN: One minute, your Honor, please.

(Pause.)

RE CROSS EXAMINATION

BY MR. ENTIN:

Q Mr. Aiken, were you sworn to tell the truth in October of 1973 before the grand jury, the transcript of which Mr. Lowe just read to you?

A I believe he read to me from the May tran-

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script.

Q May of '73?

A Yes.

Q And you were sworn to tell the truth?

A Yes, I was.

Q When you testified in June of 1974 before the Securities and Exchange Commission were you also sworn to tell the truth?

A Yes, I was.

Q And you gave a different answer in June of 1974 than you gave in May of 1973 to the same question, isn't that so?

A You are talking about the grand jury testimony?

Q And the Philadelphia testimony, yes, sir.

A The Philadelphia testimony, as I recall, my attorney told the SEC men that certain areas were already in the hands of the New York Attorney General.

Q Do you recall I read you earlier from page 132 in that transcript --

THE COURT: Had you finished your answer?

THE WITNESS: Not quite.

MR. ENTIN: I apologize, your Honor.

A What I am saying is, in my answer down at

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1 the SEC in Philadelphia I didn't mean to exclude any
2 matters. They were excluded, it was my understanding,
3 so any answer I gave regarding having received money
4 from any of these persons was not covered by testimony
5 at that point.
6

7 Q So with regard to Casa Bella, it would
8 have been an accidental falsehood in front of the SEC?

9 A Well, inadvertent, accidental.

10 Q But the other lies you told in Philadelphia
11 were not accidental, were they?

12 A No.

13 Q And you were under oath there?

14 A That's correct.

15 Q You just testified that you went to Mr.
16 Shaeffer in 1972. Did you do so voluntarily?

17 A I testified I went -- was it '72?

18 Q Early 1973. Did you go to him voluntarily?

19 A Yes.

20 Q Isn't it a fact you went to him because you
21 were already under investigation based upon the testi-
22 mony of one Sidney Stein?

23 A Not so far as I know, no.

24 Q You had no idea you were under investigation?

25 A No, I did not. Shaeffer had called me and

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asked me to come down and answer some questions.

Q So it wasn't your just walking into his office, he approached you first?

A He called me and asked if I would come down and answer questions about Power Conversion.

Q You knew there was an investigation concerning Power Conversion?

A I certainly did.

Q That's why you went to Mr. Shaeffer's office, not out of any great sense of conscience?

A It would be very hard to answer that question.

Q You have just testified in response to Mr. Lowe's question that you have the understanding that if you don't tell the truth in this proceeding here that Mr. Lowe, you have every confidence, will prosecute you to the full extent of the law?

A That's correct.

Q By the same token, you are anxious to do everything you can to cooperate with Mr. Lowe so he will make that cooperation known to the judge who sentences you?

A That's correct.

Q You intend fully to limit your liability, do you not?

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Aiken-recross-redirect

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A I think I have gone as far as I can.

MR. ENTIN: Nothing further.

REDIRECT EXAMINATION

BY MR. LOWE:

Q Do you know who will sentence you in this case?

A Yes.

Q Who?

A Judge Motley.

RECROSS EXAMINATION

BY MR. ENTIN:

Q You are going to plead guilty to three other fraud charges, is that correct?

A That is my understanding.

Q Do you know who will sentence you in those?

A I have no idea.

MR. ENTIN: Thank you.

THE COURT: If there is nothing further, the witness may come down and remain in the witness room.

(Witness excused.)

THE COURT: Do you have another witness?

MR. LOWE: The government calls Mr. Pericles Constantinou.

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Constantinou-direct

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2

P E R I C L E S

C O N S T A N T I N O U , called

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as a witness by the Government, having been first

4

duly sworn, was examined and testified as follows:

5

MR. LOWE: May I proceed, your Honor?

6

THE COURT: Yes.

7

DIRECT EXAMINATION

8

BY MR. LOWE:

9

Q Mr. Constantinou, what was your business during

10

August and September of 1972?

11

A I was president of Provident Securities.

12

Q What was Provident Securities?

13

A A brokerage house.

14

Q You have to keep your voice up so that everyone

15

can hear you.

16

What is the current status of Provident Securities?

17

A It is in receivership.

18

Q What is your current status in the securities

19

industry?

20

A I am barred for five years.

21

Q Have you ever been convicted of a crime?

22

A Yes.

23

Q What crime were you convicted of?

24

A Violating securities laws.

25

Q The Federal securities laws?

rmb-2

Constantinou-direct

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1
2 A Yes.

3 Q Have you been sentenced on that crime?

4 A Yes.

5 Q Did you serve any time in jail?

6 A No. I got a two-year suspended sentence.

7 Q Do you have an agreement with the Government
8 concerning your testimony in this case?

9 A Yes.

10 Q Would you tell us what your understanding of that
11 agreement is?

12 A To testify truthfully in this case and other
13 cases and the Government, I believe, will indict me one
14 more time.

15 Q What will you be expected to do when you are
16 indicted that one more time?

17 A Plead guilty.

18 Q When do you expect that to happen?

19 A I don't know.

20 Q Do you know the defendant in this case, William
21 Rodman?

22 A Yes.

23 Q Do you see him in the courtroom?

24 MR. BERGER: Identity is conceded.

25 MR. LOWE: Thank you, Mr. Berger.

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Constantinou-direct

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1 Q What was Mr. Rodman's business in 1972, specific-
2
3 ally in August and September of 1972?

4 A He was with C.I. Oren, a brokerage house, I
5 assume as a registered rep.

6 Q Did C.I. Oren have any interest in a stock
7 known as Power Conversion, Inc., in August and September
8 of 1972?

9 MR. BERGER: Objection, your Honor. No
10 proper predicate.

11 THE COURT: Let me hear the question.

12 (Question read.)

13 THE COURT: Well, if he knows. Overruled.

14 A Yes. They were marketmakers.

15 Q Please keep your voice up, and it might help if
16 you keep your hand away from your mouth, Mr. Constantinou.

17 You say they were marketmakers?

18 A Correct

19 Q What is a marketmaker in the securities business?

20 A Well, he makes a bid and an offer to either
21 the public or to the other brokerage houses.

22 Q Bid or offer for what?

23 A To buy or sell shares of Power Conversion.

24 Q Did there come a time when you had a conversa-
25 tion with Mr. Rodman, Mr. Constantinou, about an article

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Constantinou-direct

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1 to appear in the Value Line publication about Power
2 Conversion?
3

4 MR. ENTIN: I object, your Honor, and ask for
5 a limiting instruction with regard to defendant Zammis.
6

7 THE COURT: Ladies and gentlemen, as I
8 indicated before, certain statements testified to by wit-
9 nesses regarding a defendant not present at the time of
10 the statement will be taken subject to connection.

11 You may proceed. That applies to this testi-
12 mony.

13 Q Did you have such a conversation?

14 A Yes, I did.

15 Q First of all, can you tell us when and where
16 the conversation took place?

17 A It was in the summer of '72 and it was in a
18 restaurant on about 84th or 85th Street in New York City.

19 Q Who was present at the conversation?

20 A Mr. Rodman and myself.

21 Q Anyone else?

22 A No.

23 Q What was the conversation you had with Mr.
24 Rodman on that occasion?

25 A Well, the reason for the meeting was that I
wanted to get Mr. Rodman involved in Fantastic Fudge,

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Constantinou-direct
cross

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to give me a helping hand.

Q What was Fantastic Fudge?

A It was a stock I had underwritten. And I asked him how he kept Power Conversion up in the forties, wherever it was, and he said to me, "Well, there is an article pending from Value Line."

I said, "That's terrific. How did you get it?"

He said, "Well, it cost me." I asked him if I could get it for Fudge and he said no, probably not, Power Conversion was a legitimate company and Fantastic Fudge had no earnings or anything, and that was it.

MR. LOWE: I have no further questions.

CROSS-EXAMINATION

BY MR. BERGER:

Q My name is Mr. Berger, and I represent Mr. Rodman.

You were asked what you did, what business you were in, in August and September of 1972, and you answered that you were president of Provident Securities, is that correct?

A Correct.

Q When was Provident Securities organized?

A July of 1969.

Q Were you the majority stockholder of Provident Securities?

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Constantinou-cross

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1
2 A Yes, I was.

3 Q Were you its president since 1969?

4 A Yes.

5 Q So, therefore, you were not the president of
6 Provident Securities just in August and September of '72,
7 but you were the president since the day of its organization,
8 in 1969, is that correct?

9 A Correct.

10 Q You testified that you had a meeting with Mr.
11 Rodman in August or September of 1972, is that correct?

12 A Correct.

13 Q Are you sure that that meeting took place in
14 either August or September of 1972?

15 A No, I wouldn't swear to it. I know it took
16 place in the summer of 1972. Whether it was June, July,
17 August or September, I can't remember the exact month.

18 Q It could have been in July, is that correct?

19 A Could have.

20 Q Do you recall testifying before the grand jury
21 on October 22, 1974, with regard to Power Conversion?

22 A I recall I testified, yes.

23 MR. BERGER: I am referring to page 3, Mr. Lowe.

24 Q Do you recall being asked the following question:

25 "Q I believe that you told us that the discussion

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Constantinou-cross

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took place prior to the time the Value Line article was published?

"A Right."

Do you recall that question and that answer?

A Yes.

Q Do you recall the question:

"Q The Value Line article was published at the end of September 1972.

"A The discussion took place in July or August, a month or two prior to it."

Do you remember that question and answer?

A Yes.

Q Then do you remember the following questions and answers:

"Q If it took place in the end of September, could it have been held at the end of August or the early part of September, that conversation too?

"A I don't think it could have been the end of August or some time in August."

Do you remember that question and that answer?

A No.

Q Isn't it a fact, Mr. Constantinou, that your recollection would be better in October of 1974 than it is today?

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Constantinou-cross

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1 MR. LOWE: Objection. That calls for a
2 conclusion. I don't think he can answer it.
3

4 THE COURT: Overruled.

5 Do you have the question?

6 THE WITNESS: Yes, your Honor.

7 A To say that my memory would be better in October
8 of '74 than now, yes, but I think even at that time I wasn't
9 sure of exactly what month the discussion was held.

10 Q But at that time you were sure it was not in
11 September, is that correct?

12 A I don't recall that testimony, but if that
13 is what I said, yes.

14 Q This meeting that you had with Mr. Rodman,
15 did you call the meeting?

16 A Yes, I did.

17 Q The purpose of that meeting was to have Mr.
18 Rodman help you maintain the market on a stock called
19 Fantastic Fudge, is that correct?

20 A Not to maintain the market, but to help me
21 with buying power in the stock, yes.

22 Q Why did you call Mr. Rodman?

23 A Well, he was successful with Power Conversion,
24 he had a reputation in the street as a powerful broker.

25 Q Did he have a good reputation in the street?

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Constantinou-cross

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2 A Well, when you say good, he had a good reputa-
3 tion -- I had never heard anything bad about him, that
4 he did not live up to a particular part of a deal, or any-
5 thing, if that is what you mean.

6 Q You say that in response to a question as to
7 how do you maintain or keep the price up in Power Conversion,
8 Mr. Rodman said to you that an article would be placed or
9 was coming out in Value Line? Is that what your testimony
10 is?

11 A Correct.

12 Q Will you explain to me and to the jury how an
13 article which is going to come out maintained the market
14 that existed?

15 A If I told customers that there would be an
16 article coming in Value Line and it would help push the
17 stock up, I could get customers to buy the stock now,
18 in hopes of a profit when the article came out.

19 Q But Mr. Rodman didn't tell you that he had told
20 customers that it was coming out, did he?

21 A No.

22 Q Mr. Rodman didn't tell you that he was going
23 to pay any money for that article, did he?

24 A Well, he inferred that it was money, when he
25 said "cost".

rmb-10

Constantinou-cross

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2 Q Did he say to you "I am going to pay money
3 to get an article into Value Line"?

4 A In those direct words, I don't think so.

5 Q Did he say to you he was going to give his stock
6 to someone to get an article in Value Line?

7 A No, stock was not mentioned at all.

8 Q So that when Mr. Rodman said, as you testified,
9 that it cost, it could have cost something other than money,
10 couldn't it?

11 A I guess it could have.

12 Q Have you ever perjured yourself?

13 A Yes.

14 Q You took an oath to tell the truth and there-
15 after you lied, is that correct?

16 A Correct.

17 Q And that was in a Securities and Exchange
18 Commission investigation of a stock, is that correct?

19 A Yes.

20 Q What was the name of that stock?

21 A Fantastic Fudge.

22 Q Were there potential criminal liabilities with
23 regard to Fantastic Fudge at the time you testified before
24 the SEC?

25 A Yes.

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2 Q And wasn't one of your considerations for
3 not telling the truth the fact that you wished to avoid
4 potential criminal involvement or prosecution?

5 A The main reason at the time was just to keep
6 Provident alive --

7 Q Was it one of your considerations that there
8 was potential criminal liability with regard to Fantastic
9 Fudge?

10 A Yes.

11 Q And you didn't want to go to prison, did you,
12 Mr. Constantinou?

13 A No.

14 Q And in order to avoid going to prison, or one
15 of your considerations for lying, was to avoid going to
16 prison, isn't that correct?

17 A Yes.

18 MR. LOWE. I am afraid I didn't hear the
19 answer.

20 A Correct.

21 B 1B PM

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Constantinou-cross

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Q Mr. Constantinou, were you called to the office of the SEC or called to the office of the U. S. Attorney with regard to Power Conversion?

A Yes.

Q Who called?

A Mr. Lowe.

Q When was that?

A I can't recall the date. It has been postponed so many times. I don't know the original hearing we had, the date it was. The date, I don't recall.

THE COURT: Mr. Constantinou, please keep your voice up.

Q How long prior to October 22, 1974, the date that you testified before the grand jury, did you speak to Mr. Lowe?

A Again, I can't recall.

Q Was it a month or two or three?

A I really don't remember.

Q And did Mr. Lowe tell you why he wanted to see you?

A Yes. He said it was in regard to Power Conversion.

Q Were you surprised that Mr. Lowe was making an inquiry of you with regard to Power Conversion?

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A Yes, at the time.

Q Did Mr. Lowe tell you how he connected you to Power Conversion?

A No. I believe he started off asking me if I ever had dinner with Mr. Rodman.

Q Well, had you ever told anyone prior to the time that you discussed it with Mr. Lowe that you had dinner with Mr. Rodman?

A No.

Q Prior to the time that you spoke to Mr. Lowe, had you ever told anyone about this conversation you discussed, that you testified to today?

A No.

Q So out of nowhere you received a phone call from Mr. Lowe, is that correct?

A Excuse me, when you say did I ever tell anyone, anyone of authority or a friend or just anyone?

Q Did you ever tell a friend?

A I told one other person that I had dinner with Mr. Rodman and the extent of the conversation.

MR. BERGER: Page 5, grand jury testimony, October 22, 1974.

Q Referring to the discussion you had with Mr. Rodman, you were asked:

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"A No."

A No.

A As it is, I did tell one other person. I told grand jury I didn't.

A Yes.

five stocks that are hanging over you right now, is that correct?

A Yes.

A When you say hanging over me, by who? The

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Constantinou-cross

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Q The United States Government or the SEC.
The U. S. Attorney's office or the SEC.

A As far as I know I think the SEC is finished
with me. What the U. S. Attorney has, I don't know.

Q You testified that you were going to plead
guilty to one more case.

A Correct.

Q Do you know the name of that case?

A No.

Q Do you know the stock involved?

A No.

Q Have you been indicted?

A No.

Q Do you expect to be indicted?

A Some time, yes.

Q Have you asked Mr. Lowe the name of the stock
you are going to be indicted on?

A No.

Q Have you any idea which stock you might be
indicted on?

A No.

Q Is there more than one stock that you might be
indicted on?

A Yes.

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Q More than two?

A Could be.

Q How many do you believe you have potential criminal liability on?

A Could be about four of them.

Q At that first meeting with Mr. Lowe, did he indicate to you that he believed that Mr. Rodman was involved in a payoff to Mr. Aiken or someone in Value Line?

A Did he indicate to me? No.

Q Was it your opinion that that is what he believed?

MR. LOWE: I will object to that, your Honor.

THE COURT: Yes. Is it opinion, that is what Mr. Lowe believed?

MR. BERGER: Your Honor, I want the state of mind of the witness as to what he thought Mr. Lowe believed. Not whether it is true or false, but his state of mind.

THE COURT: All right, you can ask him his state of mind.

Q What did you believe?

A Yes, I believed that Mr. Lowe thought Mr. Rodman was involved in a payoff.

Q And did it occur to you that if you were able to

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2 give testimony against Mr. Rodman that might be considered
3 cooperating with the Government?

4 A You say did it occur to me?

5 Q Yes.

6 A It was pointed out to me.

7 Q And did you at that time believe that cooperating
8 with the Government meant testifying against Mr. Rodman?

9 A Correct, telling the truth about what I know.

10 Q Would you stretch a point to stay out of prison?

11 A No.

12 Q Did you stretch a point to stay out of prison
13 when you testified before the SEC?

14 A Yes, but again my prime consideration was keep-
15 ing the firm alive. I really didn't think about prison
16 at that time.

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Constantinou-cross

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Q You testified that you did.

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Did you know that you were lying before the grand jury when you told the grand jury under oath that you never discussed that conversation you allegedly had with Mr. Rodman with anyone else?

7

8

A No, because I didn't think of that other part.

9

10

Q You believed that Mr. Rodman had great power in the Street, is that true?

11

12

A Correct.

13

14

Q You testified that he told you that he was maintaining the market in Power Conversion, is that true?

15

16

A Yes.

17

Q And he told you that an article was coming out on Power Conversion; that's what you testified?

18

19

A Correct.

20

Q How many shares of Power Conversion stock did you buy after that conversation with Mr. Rodman?

21

22

A None.

23

24

Q Do you believe that if Mr. Rodman would have helped you with the Pudge stock, the stock would have gone up?

25

A Maybe temporarily.

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Constantinou-cross

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2 Q Do you believe that the Value Line article
3 might have temporarily made the stock of Power Conversion
4 go up?

5 A Yes.

6 Q Who is the trader or who was the trader in
7 your firm?

8 A At that time I think it was Bob Wittish.

9 Q What does a trader do in a firm such as
10 Providence Securities?

11 A He does the buying or selling of the
12 securities of the shares that the salesmen handle.

13 Q Did the company ever trade for its own account?

14 A My house wasn't a trading account. I
15 didn't have a trader who bought and sold of his own.
16 The only stock we maintained on a trading account was
17 companies we had underwritten.

18 Q You yourself never personally bought any
19 Value Line stock?

20 A Value Line stock?

21 Q I'm sorry. Power Conversion stock.

22 A No.

23 Q You testified that you asked Mr. Rodman whe-
24 ther he could help you get Fantastic Fudge into a Value
25 Line article, is that correct?

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Constantinou-cross

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A Correct.

Q He told you that he couldn't, isn't that correct?

A Yes.

Q He also told you that Power Conversion was a legitimate stock?

A Yes, had earnings.

Q Is there presently or was there an investigation of the other stock, the Fudge stock?

A Yes.

Q Did Mr. Rodman tell you that he didn't want to get involved in that stock?

A No.

Q Did Mr. Rodman do what you asked him to do?

A No.

Q Mr. Constantinou, are you married?

A Divorced.

Q Do you have any children?

A Yes.

Q How many?

A One.

Q How old?

A Three years old.

Q Who has custody of that child?

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A My ex-wife.

THE COURT: Please keep your voice up.

I can scarcely hear you.

Q Do you help support that child?

A Yes.

Q Does your ex-wife have any other source of income?

A No.

Q Are you paying any support to your wife?

A Yes.

Q Isn't staying out of prison a great concern to you so that you can continue to support your wife -- ex-wife and child?

A Yes.

Q You cannot testify today that Mr. Rodman told you that he paid money for an article on Power Conversion in Value Line, is that correct?

A I believe that I said that. When I asked Mr. Rodman how did he get into Value Line, he said it costs.

Q Did he say it cost or --

THE COURT: Value Line or --

THE WITNESS: Get Power Conversion into Value Line.

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Q And you assumed that what he meant was there had to be a payoff, is that correct?

A Correct.

Q That was an assumption on your part, wasn't it?

A Yes. I can't recall the exact wording of that. I assumed it was money.

Q You assumed it?

A If you want to call it an assumption, I can't recall if he definitely told me he paid.

MR. BERGER: I have no further questions, your Honor.

THE COURT: Any cross examination, Mr. Entin?

MR. ENTIN: One question.

CROSS EXAMINATION

BY MR. ENTIN:

Q Do you know Thomas Zamas?

A No.

MR. ENTIN: No further questions, your Honor.

REDIRECT EXAMINATION

BY MR. LOWE:

Q Mr. Constantinou, do you know what the word

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Constantinou-redirect

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1 "lie" means?

2 A Yes.

3 Q What does it mean?

4 A Not tellint the truth.

5 Q Does it mean anything more than simply just
6 not telling the truth?

7 A No.

8 Q Is there a difference between a lie and
9 mistakenly not telling the truth?

10 A Yes.

11 Q So then lying does mean something more than
12 just not telling the truth, doesn't it?

13 MR. ENTIN: Objection. Is he rehabilitating
14 or impeaching his own witness.

15 THE COURT: He may do both.

16 Q Mr. Constantinou, there is no question you
17 lied to the SEC?

18 A Right.

19 Q You didn't lie to the grand jury, did you?

20 MR. BERGER: Objection, your Honor. He is
21 leading his own witness.

22 MR. LOWE: I will take it back.

23 Q Did you lie to the grand jury?

24 A No, not knowingly.
25

1 hpa Constantinou-redirect 359

2 Q Mr. Constantinou, did Mr. Rodman refuse to
3 have anything to do with Fantastic Fudge when you asked
4 him?

5 A No. He said he was not in a position to
6 help me with Fudge, he had his own problem with the
7 Power Conversion at the time. If he saw his way free
8 in four months, five months, whatever it took, then he
9 would consider giving me a hand.

10 Q Mr. Constantinou, you have told Mr. Berger
11 that when Mr. Rodman told you in response to your
12 question how do you get a writeup in Value Line, he said
13 something to the effect that it cost. And you told
14 Mr. Berger that you couldn't honestly sit there and
15 say that he told you it cost money.

16 What does the word "cost" mean to you?

17 A Money.

18 Q And that's why you made that assumption?

19 A Correct.

20 Q Hedidn't tell you that he gave Mr. Aiken a
21 lollypop, did he?

22 A No.

23 MR. BERGER: Objection, your Honor.
24 That is being facetious.

25 THE COURT: Yes, that's bordering on being

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2 facetious.

3 MR. LOWE: I apologize, your Honor.

4 I have no further questions.

5 MR. BERGER: Your Honor, may I have one
6 moment?

7 THE COURT: Yes.

8 MR. BERGER: I have no further questions.

9 MR. ENTIN: Nothing further, your Honor.

10 THE COURT: All right. Thank you,
11 you may step down.

12 (Witness excused.)

13 THE COURT: At this time we will take a
14 10-minute recess.

15 (Recess.)

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(Jury present.)

J O H N P. M U R R A Y, called as a witness
by the government, being first duly sworn,
testified as follows:

MR. ~~LOWE~~: May I proceed, your Honor?

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. LOWE:

Q What is your occupation?

A Subscription manager for the Value Line In-
vestment Survey.

Q How long have you had that job?

A Eight years and 11 months.

Q What are your duties as subscription manager
for that publication?

A I enter subscriptions on a computer, keep
accounting records and check the mail label runs.

MR. BERGER: I am sorry, your Honor, I
didn't hear the witness. I missed the first part
of the answer.

THE COURT: Would the reporter read the
answer.

(Answer read.)

THE COURT: Mr. Murray, would you please keep

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your voice up so we don't have to repeat every answer?
Throw your voice so the lawyers way back there can
hear you, please.

Q What is the Value Line Investment Survey?

A The Value Line Investment Survey is a
weekly stock publication. It consists of three
parts, the Ratings and Reports, the Selection and
Opinion, and Advices and Index.

Q How is it sent out to anybody who gets it?

A It is sewnt through the mails.

Q I show you documents previously marked Govern-
ment's Exhibits 7A and 7B for identification and I ask
you, are those documents copies of records that are
made and kept in the ordinary course of the business
of the Value Line Investment Survey?

A Yes.

Q Is it in the regular course of the business
of the Value Line Investment Survey to make and keep
records such as that?

A Yes.

Q What are those records? What is 7A?

A 7A is the computer count from the label run
from September 29, 1972.

Q What is 7B?

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2 A 7B is the data records of individual sub-
3 sscribers.

4 MR. LOWE: The government offers 7A and
5 7B in evidence.

6 THE COURT: Any objection to 7A.

7 MR. ENTIN: Defendant Zammass has no objec-
8 tion to 7A, your Honor.

9 MR. BERGER: Your Honor, may I voir dire
10 the witness?

11 THE COURT: Yes.

12 VOIR DIRE EXAMINATION

13 BY MR. BERGER:

14 Q Mr. Murray, when was the last time you saw
15 the original from which this copy was made?

16 A That is the original that I had in my file.

17 Q This is an original?

18 A Yes, it was a photocopy from the original.

19 Q And is there anything on this document
20 which would tell you where a particular subscription
21 was mailed?

22 A No.

23 Q To tell you the name of a customer?

24 A No.

25 MR. LOWE: Your Honor, the substance of

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1 the document I don't think is in question at this point,
2 so that the examination is not proper at this stage.

3 THE COURT: You can examine him on the
4 voir dire with respect to matters which go to the
5 admissibility of the document, not its content.

6 MR. BERGER: Based upon the responses of
7 the witness, your Honor, I object to the entry of this
8 document in evidence based upon relevancy and material-
9 ity.

10 MR. LOWE: Your Honor, one of the issues
11 in this case has to do with whether or not these things
12 were mailed. This is one piece of proof that
13 the publication was mailed; the other exhibit, 7B, is
14 proof that the specific people listed in the indictment
15 had copies mailed to them. But this is the overall
16 proof of mailing, which is also in question, in that
17 the indictment recites the fact that a large number of
18 these were mailed out.

19 THE COURT: Objection overruled.

20 Any other objection to 7A?

21 Any objection to 7B, Mr. Entin?

22 MR. ENTIN: No objection.

23 MR. BERGER: I have no objection, your
24 Honor.
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(Government's Exhibits 7A and 7B were received in evidence.)

DIRECT EXAMINATION CONTINUED

BY MR. LOWE:

Q Mr. Murray, directing your attention to Government's Exhibit 7A, it bears in the upper right-hand corner initials and under which appears the date 9/21/72. To what does that date refer?

A The initials refer to one of my control clerks in our New Jersey division which took the total counts from each mode of transportation with that particular issue.

MR. ENTIN: Objection, your Honor. That is hearsay, as to what they did in New Jersey.

THE COURT: Yes, unless you know of your own knowledge. Do you know that of your own knowledge?

THE WITNESS: I know we get counts from our label runs and that I have a clerk verifying the totals each week so that I am sure a subscription is going out.

MR. ENTIN: It is still hearsay, your Honor.

THE COURT: Under your jurisdiction your clerk is doing this?

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THE WITNESS: Yes.

THE COURT: Overruled.

Q The question was, to what does the date 9/21/72 refer?

A That represents the issue of the Value Line -- the issue date of the Value Line Investment Survey when the labels were prepared for the issue of 9/29/72.

Q In other words, that document indicates that on 9/21/72 the mailing labels for the 9/29/72 issue were prepared?

A Yes.

Q Does that document show how many mailing labels were prepared?

A Yes. The overall count with all the modes came up to 42,955.

Q When you refer to "all modes," what do you mean?

A First-class mail, first-class special delivery, airmail, airmail special delivery and foreign subscriptions.

Q Are there any subscriptions delivered other than through the mail?

A No.

Q Directing your attention to the documents

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marked 7B in evidence, there are, are there not, six different records?

A Yes.

Q Are they all basically the same record but referring to different subscribers?

A Yes.

Q Would you tell us with respect to Government's Exhibit 7B what the meaning of the entries on this document are, reading from left to right?

A The first four letters represent part of our uniqueness code, or account number, whichever one you want to call it. We are taking the first, third and fifth positions of the last name to come up with the alpha portion of our account number.

The next is based on your five digits of your Zip Code and the last two digits represent the last two digits of your street address.

The next digits represent the date of the transaction.

The next is the description whether the subscriber got a new order or renewal and when he made his payment.

The next field is the term of the subscription, the month of expiration and the year of expiration.

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The next position pertains to our marketing section, which is a source code, and the next is the amount column and the next pertains to a transaction code and the "1" indicates Value Line.

Q You say on the transaction code the "1" indicates Value Line. What does that mean?

A No, the transaction code is a separate code. The "1" is the service code, because Value Line publishes more than one service.

Q What does the "1" mean?

A That means that it is a Value Line subscription.

Q Does that mean the Value Line Investment Survey?

A Yes.

Q Do these records reflect the fact that as of September 29, 1972 the six subscribers to whom those records refer were subscribers to the Value Line Investment Survey?

A Yes.

Q Were copies of the Value Line Investment Survey mailed to those six subscribers, copies of the September 29, 1972 issue.

MR. BERGER: Objection, your Honor.

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The question asks for a conclusion.

MR. ENTIN: Defendant Zammias joins in that objection, your Honor.

THE COURT: Is this the person in charge of the mailing?

THE WITNESS: Yes.

THE COURT: Overruled.

MR. ENTIN: I didn't hear your Honor's question.

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1 THE COURT: I asked the witness whether he was
2 in charge of the mailing, was that his function.
3

4 Q Were copies of the September 29, 1972 Value
5 Line Investment Survey mailed to the six subscribers
6 referred to in the records that comprise Government Exhibit
7 7B?

8 A Being that my records, my control totals agreed,
9 I would say all subscribers on our galley list got the
10 records within that week.

11 MR. LOWE: No further questions.

12 THE COURT: Any cross-examination of this
13 witness?

14 MR. ENTIN: Yes, your Honor, but I would like
15 a few moments to study 7B, please.

16 THE COURT: All right.

17 (Pause.)

18 CROSS-EXAMINATION

19 BY MR. ENTIN:

20 Q Mr. Murray, I show you the last document, which
21 is entitled "Loeb, Rhoades & Co.," in which there is a
22 notation in the upper corner saying "combination."

23 A They got the Value Line Investment Survey,
24 the over-the-counter special situations and the convertible
25 survey.

rmb-2

Murray-cross

Q Is there a specific code number for that?

A No.

THE COURT: For the combination?

MR. ENTIN: Yes.

A No.

Q The only code number you have is the code number 1 which indicates Value Line, is that correct?

A No. I have an 8 or OTC and a 9 for convertible, but at that point we were writing on our data cards to do a cross-reference of our combination subscribers.

Q Is there any reason that the Loeb, Rhoades sheet is all in handwriting and most of the other sheets appear to be computer printouts?

A Yes, there is a possibility that at that time we were on heat transfer posting machines and if the clerk could not find the data card at the point that they were posting to the records, they went back and hand-posted the record.

Q And it wasn't replaced with a data card thereafter?

A No. We only got one data card per subscriber.

Q In your direct testimony you stated that Value Line Selection and Opinion was distributed, and these were your words, "Essentially through the mails."

1 rmb-3

Murray-cross

2 A Yes.

3 Q Later on in response to a question that Mr.
4 Lowe asked you, you indicated that it was distributed
5 solely through the mails. Which one of those two is cor-
6 rect?

7 A It was distributed solely through the mails.
8 That is the only way we deliver our subscriptions.

9 Q It is not essentially through the mails, there
10 are no other ways?

11 A There are no other ways.

12 Q Can Value Line be purchased other than by sub-
13 scription?

14 A No.

15 Q Are there trade copies distributed at any time?

16 A Not as far as my recollection.

17 Q You base your total testimony that these six
18 individuals were mailed copies of Value Line not based on any-
19 thing on those cards that show it being mailed, but based
20 upon Exhibit 7A, which is your control sheet, is that
21 correct?

22 A Yes.

23 Q On your control sheet the first line is called ---
24 it appears to be -- and I have difficulty reading it --

25 A All subscribers.

1 rmb-4

Murray-cross

2 Q Why isn't there a figure there?

3 A Because the clerk was only interested in
4 picking up the other methods and this is second class mail
5 and that is the total subscriptions.

6 Q Is there anything on here which can show me
7 other than this control sheet what the total subscriptions
8 in force on September 21, 1972 were?

9 A Not on that sheet, but I have records that can
10 show --

11 Q So your statement that you knew as a result of
12 this sheet that everything had to be fine because that
13 was the total number of subscriptions is based upon a
14 second sheet which has not been placed into evidence in
15 this court?

16 A I would say yes.

17 Q Did you prepare that second sheet?

18 A No, I didn't do any preparations on it.

19 MR. ENTIN: Your Honor, I move to strike the
20 entire testimony of this witness based on his testimony
21 as to his recollection that this was the total mailing
22 and indeed this may have been the total mailing of this par-
23 ticular issue but, however, his knowledge as to the total
24 number of subscribers is not within his total knowledge,
25 and he doesn't know that every subscriber was mailed

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1 rmb-5
2 this issue on that date nor can he say with certainty
3 it was mailed to these people.

4 MR. BERGER: I join in that.

5 THE COURT: Overruled.

6 MR. ENTIN: Nothing further, your Honor.

7 CROSS-EXAMINATION

8 BY MR. BERGER:

9 Q Mr. Murray, Exhibit 7A, the computer run, what
10 is the input into the computer that that computer run re-
11 flects?

12 A It is punch cards, mag tape, disk.

13 Q What type of information is put into the com-
14 puter?

15 A Your cards are going into the computer.

16 Q But what type of information is on those cards?

17 A Depends on what the transaction is.

18 Q Well, I am talking with regard to Exhibit 7A.

19 A All right, in Exhibit 7A you would have new
20 orders on the file going in in your current week, renewals,
21 extensions. We get accounting reports which reflect this
22 information.

23 Q This computer run is supposed to tell you the
24 exact number of subscribers to Value Line on any particular
25 day?

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A On any particular week.

Q On any particular week?

A Yes.

Q Do you put the names of the subscribers into the computer also?

A If it is a new order.

Q If a subscriber discontinues his subscription, you would remove it?

A I would cancel it out with an accounting transaction.

Q Who gets the computer run?

A Depending on the report, it would go to the various sections of management.

Q Does the computer run come out showing a name and address or just numbers?

A On all letters or new business it would show names, addresses, zip codes.

Q And otherwise --

A If it is a renewal we only input a uniqueness number.

Q In what form does that material come out of the computer?

A Well, it can come out of the computer in any form that you would wish. You either want mail labels,

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1 rmb-7
2 you might want promotion labels, you might want a special
3 run for a particular promotion and just subtract X amount
4 of subscribers.

5 Q On this computer run in particular, Exhibit 7A
6 what came out of the computer?

7 A Labels broken down into the methods of trans-
8 portation, which those represent the figures on the bottom.

9 Q What do you mean by the methods of transporta-
10 tion?

11 A When you are talking about subscriptions you
12 have various means of mailing them, such as first class,
13 second class, air mail, air mail special delivery, foreign
14 subscriptions and second class mail.

End 3B

2 Q Are any of them ever mailed through private
3 carriers outside of the United States Postoffice?

4 A No.

5 Q In this case, Exhibit 7A reflects the labels
6 that came out, is that correct?

7 A Yes.

8 Q Government Exhibit 7B, this does not come out
9 of a computer, is that correct?

10 A Yes. The first time in a label is printed for
11 the data card and the data card would be printed off the
12 computer.

13 Q Is this a data card?

14 A Yes.

15 Q And this was printed off the computer?

16 A The first transaction you would get a data
17 card for a new subscriber. You only did it on certain
18 transaction codes to get this particular data card.

19 Q As I understand it, you have six different
20 documents under 7B.

21 A Right.

22 Q What does each document represent?

23 A Each document represents an account history
24 of an individual subscriber.

25 Q And is this made after or before document 7A?

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A It is made prior to the label runs.

Q So in effect this document says that on a certain date, a certain publication was delivered, is that correct?

A No. It says I entered a transaction on a computer at a particular date.

Q To have it delivered?

A Yes.

Q To have a label made?

A Right.

Q So that first you enter the information into the computer, then this comes out, is that correct?

A Yes, that's right.

Q And after that, this comes out?

A No, I get a galley list prior to that. If you turn that up, you will see subscriber names on the galley list.

Q Are these the labels actually?

A Without the garbage on top they would be the label.

Q So that they are the source from which the labels are made?

A Yes.

Q You testified that you were in charge of mailing,

1 hpb-3

Murray-cross

2 is that correct?

3 A Yes.

4 Q Where was your office located, in New Jersey?

5 A No, in New York.

6 Q Where were the mailings made from?

7 A New Jersey, the label runs.

8 Q The mailings that we are talking about in this
9 case were mailed from New Jersey, is that correct?

10 A Yes.

11 Q Who supervised the mailings from New Jersey?

12 A I have control clerks in Jersey that check
13 label counts and they send them to my office and I insure
14 that the totals agree.

15 Q Have you ever had more than one label made
16 out to the same customer?

17 A Yes.

18 Q And if that happened, isn't it a fact that
19 your computer run would balance out, yet some of your
20 subscribers would not obtain their publication, is that
21 correct?

22 A Not necessarily. Not for one. If the error
23 was in the hundreds, then you would have problems in
24 subscription labels.

25 Q If two labels were made for one customer,

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Murray-cross

1 your computer runs would balance out, is that correct?

2 A No, they wouldn't. They would be one over.

3 Q What if two were made for one customer and
4 one was not made for another customer, then would they
5 balance out?

6 A They would balance.

7 Q Has that ever happened?

8 A No.

9 Q After the labels are made, Mr. Murray, what
10 is done with them? What part of the premises of Value
11 Line are they made in?

12 A When you are referring to the premises, they
13 are made in the computer room in our Jersey division. Then
14 they are sent to the mail department and one of my clerks
15 gets the control figures after each method of transporta-
16 tion. Then they are given to the mail room for the
17 machine which cuts the labels and puts them on the envelopes.

18 Q Is there anyone at Value Line whose function
19 it is to supervise the physical movement of these
20 labels from the computer room to the various other stations
21 that they pass through before the mailing is actually
22 made?

23 A Well, it is supervised from the computer. The
24 computer has their control clerks, I have my control
25

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Murray-cross

clerks, and the mail department has a supervisor. Everybody has to be in agreement with eachother.

Q Has it ever happened, while you have been in the employ of Value Line, that although the computer runs balance out, a subscriber called you and told you he didn't receive his subscription?

A I would have to say yes to that question because of the postal problems.

Q What postal problems are those?

A All over the country.

Q Let me ask you this: What do you mean by all over the country?

A Let's say the post men take a holiday, and any holiday week you just sit at my desk and see how many phone calls you get.

Q After the labels are put on the envelopes, are these envelopes placed in a mailing room?

A Yes.

Q Has it ever happened that an envelope that has had the label put on it, has not gone into that mailing room?

A I can't answer that.

Q Do you personally supervise that function?

A No, I don't.

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Q So that in effect you are not supervising the mailing, are you?

A To a certain degree.

Q Actually what you do is check the computer runs to see if the mailings have been properly labeled and the subscribers properly placed for mailing?

A No, I go one step further. I also check with my accounting department and see what they pay the post office.

Q And is there anywhere on either of these exhibits, 7A or 7B that shows that the post office was paid?

A No.

Q You don't have direct knowledge of that with you now, do you?

A No.

Q Is there another document of that nature?

A I am not sure how far they keep accounting records.

Q But that is another safeguard that has been established by Value Line to make sure that each subscriber gets his --

A Yes.

MR. LOWE: Your Honor, I think this has gotten to the point of being repetitious and I therefore object.

MR. BERGER: Your Honor, I don't think I am

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Murray-cross

2 repetitious. I am trying to establish a fact and I
3 just don't want to go ---

4 THE COURT: Approach the bench.

5 (At the side bar.)

6 MR. BERGER: Your Honor, relying upon
7 United States vs. Wolfson, the proper person to have been
8 brought down to prove mailing would have been a person
9 that supervised and was able to testify with regard to
10 the actual physical placement of the envelopes into the
11 mailing room and who can then testify that in the regular
12 course of business, a certain other individual comes and
13 picks up that mail. Once you have the witness who testi-
14 fies that he picks up that mail and that it was in the mailing
15 room, then you have established mailing under U. S. vs.
16 Wolfson.

17 I believe that as testimony is now coming out,
18 although Mr. Murray is in charge of the computer runs,
19 he is not the proper witness to prove mailing under that
20 case which is the case I believe that right now is the lead-
21 ing authority on mailing.

22 MR. ENTIN: I join in that argument.

23 MR. LOWE: Mr. Entin and Mr. Berger both
24 know there are six people in the room right now who repre-
25 sent the subscribers and are prepared to testify they got

hpb-8

Murray-cross

384

the mail. I assume they are deliberately trying to delay the trial.

MR. ENTIN: Certainly my cross-examination was only five minutes and I resent the implication.

MR. BERGER: And I also. I didn't know that you had any witnesses here.

MR. ENTIN: For the record, I knew.

MR. BERGER: I didn't.

MR. LOWE: Then you weren't listening when I told you.

THE COURT: How much longer do you intend to be?

MR. BERGER: Three minutes.

THE COURT: All right.

(In open court.)

Q Mr. Murray, you are not in charge of the employees who deliver the mail to the mailing room, are you?

A No.

Q You are not in charge of the employees that take the mail from the mailing room and bring it to the post office, are you?

A No.

Q And you have no first-hand knowledge then that the mail was brought to the mailing room or taken from the

1 mailing room by the person that is supposed to do the
2 mailing, is that correct?

3 A No. Half of it is correct. I would say I
4 know what comes from the computer to the mail room.

5 Q But you do not supervise the employees who
6 are supposed to bring the mail to the mailing room, is that
7 correct?

8 A That is correct.

9 Q You do not supervise the employees that are
10 supposed to take the mail from the mailing room, is that
11 correct?

12 A That's right.

13 MR. BERGER: I have no further questions, your
14 Honor.

15 THE COURT: Anything further?

16 MR. LOWE: I have nothing, your Honor.

17 THE COURT: Thank you. You may step down.

18 MR. BERGER: Your Honor, at this time I move
19 to strike the testimony of this witness.

20 THE COURT: Denied.

21 MR. ENTIN: I join in the motion, your Honor.

22 THE COURT: Denied.

23 MR. LOWE: The Government calls Mr. Heuermann.

24 THE COURT: You are excused.

25 (Witness excused.)

hpb-10

Heuermann-direct

H U G O H E U E R M A N N, called as a witness by the Government, having been first duly sworn, was examined and testified as follows:

MR LOWE: May I proceed, your Honor?

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. LOWE:

Q Mr. Heuermann, what is your occupation?

A I am a security analyst.

Q By whom are you employed?

A Chemical Bank.

Q How long have you been so employed?

A Forty-two years.

Q I am showing you Government Exhibit 8A for identification. Can you identify that document?

A Yes, I can.

Q What is it?

A It is a September 29, 1972 edition of the Value Line Selecion and Opinion.

Q Where did you get it?

A From our library.

Q Does it bear a stamp?

A Yes, it does.

Q What does that stamp indicate?

hpb-11

Heuermann-direct
cross

387

A Received September 28, 1972, investment
analysis department.

Q How was it received?

A I can't vouch for that, but it has always been
traditionally by the mail.

MR. LOWE: The Government offer 8A in evidence,
not for its truth, but solely for the fact that it was
received.

THE COURT: Any objection?

MR. ENTIN: No objection, your Honor.

MR. BERGER: No objection, your Honor.

THE COURT: Let it be received.

(Government Exhibit 8A was received in
evidence.)

MR. LOWE: I have no further questions, your
Honor.

THE COURT: Any cross-examination of this
witness?

CROSS-EXAMINATION

BY MR. BERGER:

Q Is there anything on that document that indicates
how it was received?

A There is not.

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hpb-12

Heuermann-cross

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Q Do you receive the mail for the Chemical Bank?

A No. My librarian does.

Q And you wouldn't know if something was received through the mail or some other means unless you were told by your librarian, is that correct?

A That is correct.

Q Did you discuss with your librarian the manner in which -- withdrawn.

So that you have no direct knowledge as to how the article was received?

A I do not.

MR. BERGER: I have no further questions, your Honor.

CROSS-EXAMINATION

BY MR. ENTIN:

Q Mr. Heuermann, when you testified a moment ago that Selection and Opinion is usually received through the mail, is that based solely upon what your librarian may have told you?

A Well, we have been subscribing since 1952, to my knowledge, and I have always had it come in by mail, from listening to my librarian.

MR. ENTIN: Your Honor, at this point I move to strike the testimony as purely hearsay, and it

1
2 comes from his librarian, totally outside the presence of
3 anybody. It is pure hearsay.

4 THE COURT: What do you say, Mr. Lowe?

5 MR. LOWE: Your Honor, since the only way it
6 could have gotten there in the mail, I don't care if the
7 testimony that it came in the mail is stricken. I will
8 accept that it be stricken.

9 MR. BERGER: Your Honor, I object to that
10 type of objection in which Mr. Lowe in effect is testifying
11 that the only way it could have been received is through
12 the mail. That is the very issue and that is up to the jury
13 to decide. Mr. Lowe should not say that that is the only
14 way it could be received.

15 THE COURT: I think the witness testified init-
16 ially on direct that he had no direct knowledge as to how
17 it was actually received, but as far as he knew, it usually
18 came through the mail.

19 MR. ENTIN: Yes, your Honor, and I asked him on
20 cross what he based his knowledge on and he said "that's
21 what my librarian tells me." And that is hearsay.

22 THE COURT: Yes, but his testimony was he had
23 no direct knowledge initially.

24 In other words, the question was superfluous.
25 He has already testified he had no direct knowledge.

hpb-14

Heuermann-cross

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MR. ENTIN: No, your Honor, on direct --

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THE COURT: He said he had no direct know-

4

ledge, which means he must have gotten it by hearsay.

5

Is there anything further?

6

MR. BERGER: I just join in the motion to

7

strike, your Honor.

8

THE COURT: The witness is excused.

9

Next witness.

10

MR. LOWE: The Government calls Bess Mersten.

End 4A

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B E S S J. M E R S T E N, called as a

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by the government, being first duly sworn,

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testified as follows:

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MR. LOWE: May I proceed, your Honor?

6

THE COURT: Yes, you may.

7

DIRECT EXAMINATION

8

BY MR. LOWE:

9

Q Mrs. Mersten, by whom are you employed?

10

A Monarch Insurance Company of Ohio?

11

Q In what capacity are you employed?

12

A Assistant treasurer.

13

Q How long have you been so employed?

14

A I have been with the company for 19 years,

15

five and a half years as the assistant treasurer.

16

Q I am showing you Government's Exhibit 12A

17

for identification, Mrs. Mersten, and I am referring

18

you to the first sheet of that exhibit. Is that a

19

record that is made and kept in the ordinary course of

20

business of Monarch Insurance?

21

A Yes.

22

Q Was it the ordinary course of business of

23

Monarch Insurance to make and keep such a record?

24

A Yes, it is, for all checks that were sent

25

out we make up a check requisition like this.

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Q Directing your attention to the second sheet of that exhibit, can you tell us what that is?

A The bill from Arnold Bernhardt & Company for a two-year subscription, from February, 1972 to February, 1974.

Q Did the second document come from the records of Monarch Insurance Company?

A Yes, it did.

Q Did you produce them here at our request?

A Yes.

MR. LOWE: The government offers 12A in evidence.

MR. ENTIN: Objection to relevance and materiality, your Honor.

THE COURT: Overruled. Any other objection?

If not, let it be received.

(Government's Exhibit 12A was received in evidence.)

Q Mrs. Mersten, do you know whether or not Monarch Insurance actually received Value Line Selection and Opinion pursuant to the subscription those records indicate you paid for?

MR. ENTIN: Objection. The question is

1 hpa

Mersten-direct-cross 393

2 general and does not refer specifically to the issues.

3 THE COURT: Overruled.

4 A Yes, sir. We have been receiving it and,
5 as a matter of fact, we still have some on file.

6 MR. LOWE: I have no further questions.

7 CROSS EXAMINATION

8 BY MR. ENTIN:

9 Q Miss Mersten, do you know of your own per-
10 sonal knowledge that the September 29, 1972 issue of
11 Value Line Selection and Opinion was received?

12 A No, I can't say that.

13 Q So you don't know if it was received or not?

14 A I know that we do receive the subscription,
15 that we did at that time receive a subscription every
16 day.

17 Q Not every day. You mean --

18 A No, I mean --

19 Q You don't know if that issue was received
20 of your own personal knowledge?

21 A I have no copy now. We didn't keep them
22 longer than this.

23 MR. ENTIN: Your Honor, I move to strike
24 the testimony.

25 THE COURT: Overruled.

hpa

Mersten-cross-redirect

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MR. BERGER: No questions.

REDIRECT EXAMINATION

BY MR. LOWE:

Q Did you ever have occasion to write to Arnold Bernhardt & Company and complain you didn't receive it?

A No, sir.

THE COURT: Anything further?

Thank you. You may step down.

(Witness excused.)

THE COURT: Next witness.

MR. LOWE: The government calls Josefina Arencibia.

J O S E F I N A A R E N C I B I A, called as
a witness by the government, being first duly sworn,
testified as follows:

DIRECT EXAMINATION

BY MR. LOWE:

Q Miss Arencibia, I will ask you to speak up nice and loud so that everyone here in the room can hear you, please.

Can you tell us by whom you are employed?

A By the First National City Bank.

Q What is your position at the bank?

hpa

Arencibia-direct

395

A I am the assistant department head of the investment library.

Q How long have you been so employed?

A For eight years.

Q I am showing you Government's Exhibit 2C for identification. Can you identify this document?

A This is the copy of the Value Line Survey that we received at the library, at the investment library.

Q When did you receive it?

A September 28, '72, according to our stamp.

Q Is that document the complete thing that you received at the time?

A No, it is not. It comes in three parts: Part No. 1, that is the index, and the part No. 2, that is the Selection and Opinions. That we don't keep.

Q Is this stamp that appears in the upper left-hand corner of the first page the stamp of the First National City Bank?

A It is.

MR. LOWE: The government offers 2C in evidence, again not for the truth but that it was received.

THE COURT: What is the number?

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Arencibia-direct

396

MR. LOWE: 2C.

THE COURT: Any objection?

MR. BERGER: No objection.

MR. ENTIN: No objection.

(Government's Exhibit 2C was received in evidence.)

Q Miss Arencibia, do you know how those publications arrive at First National City Bank?

A Through the mail.

MR. LOWE: No further questions.

THE COURT: Any cross examination of this witness?

CROSS EXAMINATION

BY MR. BERGER:

Q How do you know they are received through the mail?

A Because it comes always with our regular mail. All our subscriptions come through the mail.

Q Is it brought in to you in an envelope with a stamp on it?

A It was brought in an envelope. I don't remember exactly in '72 how it was.

Q But you take it out of the envelope?

A Excuse me?

hpa

Arencibia-direct

397

Q Do you take it out of the envelope?

A Sometimes I do; sometimes I don't.

MR. BERGER: No further questions, your Honor.

CROSS EXAMINATION

BY MR. ENTIN:

Q Do you recall specifically, ma'am, receiving Selection and Opinion on September 29, 1972?

A I can't say. I mean I can't remember in '72. I can assume if we get one part, we get the whole subscription.

Q But you couldn't say for sure?

A I can't remember what happened in '72.

MR. ENTIN: Thank you.

No further questions.

THE COURT: Thank you. You may step down?

(Witness excused.)

THE COURT: Next witness.

MR. LOWE: Mr. Ted Bottino.

1 hpa

2 T H E O D O R E B O T T I N O, called as a
3 witness by the government, being first duly sworn,
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. LOWE:

7 Q Mr. Bottino, by whom are you employed?

8 A I'm employed by E.F. Hutton & Company.

9 Q What is your occupation there? What is
10 your position?

11 A I am the assistant vice president in charge
12 of office services.

13 Q How long have you had that position?

14 A I have had the position in the department
15 since April of 1967.

16 Q I am showing you Government's Exhibit 11A
17 for identification, Mr. Bottino. Can you tell us
18 what that exhibit is?

19 A This is a copy of the subscription analysis that
20 is made up in my department through a computer.

21 Q Could you tell us specifically what kind
22 of information is reflected on that document?

23 A This document states for a particular office
24 the number of sugscriptions per a subscription, the
25 name of the subscription, the period during which that

hpa

Bottino-direct

399

subscription is being received, its approximate cost, the name of the individual who receives the subscription at the company, and the department to which it is charged.

There are various subscriptions on here, on all of these listings. It is a branch subscription, meaning all subscriptions received by that particular location are grouped on one page or two pages.

Q Government's Exhibit 11A, to what branch of E. F. Hutton does that refer?

A The corporate finance department, sir.

Q Where is that located?

A This is located at 1 Battery Park Plaza.

Q Does that document reflect the subscription to Value Line Publication?

A Yes, it does.

MR. LOWE: The government offers 11A in evidence.

MR. ENTIN: No objection, your Honor.

MR. BERGER: No objection, your Honor.

THE COURT: All right, it will be received.

(Government's Exhibit 11A was received in evidence.)

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Bottino-direct

400

Q Mr. Bottino, reading from left to right across the page and starting at the top, we have the word "Office" and then underneath that what appears to say the letters "OFF." Could you tell us what that means?

A You are missing a small piece. There should be a number 13 on the left-hand, right next to "OFF." That signifies the location to which the subscription is being delivered -- being charged; pardon me. That it is charged and delivered.

The names at the right-hand side, under title "Attention of," show the individual, and that states where the subscription is being delivered.

Q Since the 13 does not appear on this copy, how can you tell it should appear?

A Based on the charge numbers I can tell and the names on here. I know all of these people are under E. F. Hutton code office 13 at that time. That code has since changed but it was 13 at that time.

Q The next column, going across from left to right, is headed "Subscript," and if you look real close it appears to say "Number of subscriptions."

A That's right.

Q The number listed under that is how many

hpa

Bottino-direct

401

subscriptions of a particular publication are being received?

A That's correct.

Q The next column says "Publication" and under that are various numbers. Is that the name of the publication?

A That's right.

Q And under that it says "Value Line Investment Survey"?

A That's correct.

Q The next one, "Period Covered," does that refer to the period of the subscription?

A That's correct.

Q And on this page for Value Line Investment Survey it shows October of '71 to October of '73?

A That is correct.

Q The next column says "Cost," and under that are various what appear to be dollar amounts, is that correct?

A That's correct.

Q They refer to the cost of the subscription?

A The approximate cost, yes.

Q And the next column is "Attention of," and names of persons, and those are the persons to whom the

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Bottino-direct

402

1 subscriptions are --

2
3 A Are directed, yes.

4 Q And the charge number you have referred to
5 refers to an accounting reference internally?

6 A It's an internal code for us.

7 Q And the appearance of the number 13 tells you
8 that that's the Battery Park Plaza office?

9 A Three are three things which tell me that:
10 where the 13 is missing, as I said, the name and the
11 charge code.

12 Q But you can tell from this piece of paper
13 that it refers to the Battery Park Plaza office?

14 A Yes, sir.

15 MR. LOWE: I have no further questions.

16 CROSS EXAMINATION

17 BY MR. ENTIN:

18 Q Mr. Bottino, do you know of your own personal
19 knowledge that the September 29, 1972 issue of Selection
20 and Opinion was received at the Battery Park Plaza office
21 of E. F. Hutton?

22 A No, I don't know of my personal opinion.

23 Q I just asked if you have personal knowledge.

24 MR. ENTIN: Nothing further.

25 MR. BERGER: No further questions.

1 hpa

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2 THE COURT: You are excused.

3 (Witness excused.)

4 THE COURT: Next witness.

5 MR. LOWE: Bernard Jaffe.

6 BERNARD JAFFE, JR., called as
7 a witness by the government, being first duly
8 sworn, testified as follows:

9 MR. LOWE: May I proceed, your Honor?

10 THE COURT: Yes.

11 DIRECT EXAMINATION

12 BY MR. LOWE:

13 Q Mr. Jaffe, what is your occupation?

14 A Partner of Loeb, Rhoades & Company and I
15 run the uptown division of the organization.

16 Q Where is your office located?

17 A 375 Park Avenue.

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2 Q Were you in that position in September of
3 1972?

4 A I was in the office -- I was not a partner
5 in '72 but I was associate manager in '72.

6 Q At that time, September of 1972, did your
7 office have a subscription to the Value Line Investment
8 Survey?

9 A Yes.

10 Q Did you regularly receive the Value Line
11 Investment Survey?

12 A Yes.

13 Q How did you receive it?

14 A Comes in the mail, I believe. It comes
15 in the mail to our library and then it is put in the
16 library for everyone to read.

17 MR. LOWE: I have no further questions.

18 THE COURT: Any cross examination of this
19 witness?

20 CROSS EXAMINATION

21 BY MR. ENTIN:

22 Q Do you know of your own personal knowledge
23 that the September 29, 1972 issue of Value Line
24 Selection and Opinion was received by your library?

25 A Personal knowledge?

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Jaffe-cross-redirect

405

Q Personal knowledge, sir.

A No, I don't.

MR. ENTIN: No further questions.

THE COURT: Anything further.

MR. BERGER: No questions.

REDIRECT EXAMINATION

BY MR. LOWE:

Q Did you ever have occasion to write the Value Line and complain you didn't receive it?

A No, not at all.

MR. BERGER: Objection, your Honor.
I think that question is immaterial and irrelevant.

THE COURT: Overruled.

Anything further?

MR. ENTIN: Yes, your Honor.

RECROSS EXAMINATION

BY MR. ENTIN:

Q Would you be the one to write if something didn't come in?

A Yes.

Q Have you ever had opportunity to write to anybody that something didn't come in?

A Many times.

Q So therefore there are times that things are

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Jaffe-recross

406

not delivered?

A No, I didn't say that. I might write on occasion where they wanted additional copies of something or the fact that subscriptions -- we have a tremendous library and a lot of subscriptions and we are constantly in contact with the publications with certain things.

Q In September of 1972 was your job function to make sure that all subscriptions were received?

A One of my jobs.

Q Do you have any independent recollection of the September 29, 1972 issue of Selection and Opinion?

A No.

MR. ENTIN: Thank you.

THE COURT: Anything further?

MR. LOWE: I have nothing, your Honor.

MR. BERGER: No questions, your Honor.

THE COURT: The witness is excused.

(Witness excused.)

THE COURT: Do you have another short witness?

MR. LOWE: Not a short one, your Honor, no.

THE COURT: We will recess now until 10

1 rma

2 o'clock tomorrow morning. The jury is excused.
3 Please arrive at 10 minutes before 10.

4 (The jury left the courtroom.)

5 MR. BERGER: Your Honor, at this time may
6 we ask that one question?

7 MR. LOWE: Of Eric Aiken?

8 MR. BERGER: Yes.

9 Before I ask the question I would like to
10 offer the question.

11 THE COURT: I can't hear you.

12 MR. BERGER: The question that I am
13 going to ask, your Honor, would be whether he has been
14 called before any grand jury to testify with regard to
15 any of the other involvements he had where he admitted
16 taking bribes with regard to the persons that gave the
17 bribe. I don't mean this particular grand jury, the
18 one that came down with this indictment, but whether
19 he testified before any other grand jury with regard
20 to any other individual involved in any bribe offer to
21 him with regard to Value Line.

22 THE COURT: All right.

23 MR. LOWE: Your Honor, I object. I think
24 it is wholly irrelevant. I think it is a fishing
25 expedition on the part of Mr. Berger to find out whether

1 rma

2 or not there are other grand jury investigations going on,
3 and I think that it has absolutely no relevance to this
4 case in any way.

5 THE COURT: What is the relevance?

6 MR. BERGER: I made a motion to dismiss
7 based upon selective prosecution --

8 THE COURT: I think that is the motion
9 I told you had to be written out, didn't I, supported
10 by points and authorities, because the time for making
11 any such motion to dismiss the indictment has long
12 since passed? Isn't that so?

13 MR. BERGER: If I would have known the
14 facts, your Honor, the facts that I just learned on
15 that day, the day I made the motion --

16 THE COURT: What is your motion?

17 MR. BERGER: To dismiss the indictment
18 based upon discriminatory prosecution, and I cited
19 certain cases.

20 THE COURT: I don't think you did. I
21 said to write it out.

22 MR. BERGER: I did cite some of them, your
23 Honor.

24 I don't want to know who is involved in the
25 other grand juries, or anything about the other grand

1 rma
2 juries, I just want to know whether Mr. Aiken has been
3 called as a witness to testify with regard to other
4 individuals that offered or paid him bribes with regard
5 to Value Line, not as to his own involvement, but to
6 the involvement of other individuals. It is my con-
7 tention that the only case being prosecuted by the
8 government and up to this point the only one that was
9 ever before a grand jury by the Southern District has
10 been the one against Mr. Aiken, Mr. Zannas and Mr. Rodman.

11 THE COURT: For accepting a bribe?

12 MR. BERGER: This type of case, your Honor,
13 yes.
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2 MR. LOWE: I don't see that even if the facts
3 are as Mr. Berger suggested they may be that it goes to
4 any question of discriminatory prosecution.

5 MR. BERGER: That is a question of law, Mr.
6 Lowe. I am going into the question of fact. I will
7 be happy to give you the citations where it is --

8 THE COURT: I think what we ought to do is
9 have that motion first and, as I said, with some law to
10 support it. I don't know what you are getting at. There
11 have certainly been other people indicted here and con-
12 victed and serving time in jail for taking bribes in
13 securities cases and I don't know what you can be talking
14 about.

15 You mean the Government is limited to selecting
16 a particular statute in every case and it can't use any
17 statute it feels applicable?

18 MR. BERGER: What I am saying, your Honor, is
19 that this particular indictment was brought down with
20 the purpose of selecting these particular defendants, that
21 they were selected, that there has not been one indictment
22 in the Southern District of a violation of Section 77QB, but
23 even that is not relevant.

24 The material and relevant part is that knowing
25 the facts as given by Mr. Aiken, they have not proceeded

1 rmb-2

2 against any other defendant but have selected Mr. Zammass
3 and Mr. Rodman.

4 Before I can go into why they selected Mr.
5 Zammass and Mr. Rodman, I must show there has been a
6 selection and one way of showing a selection is the fact
7 that they have not proceeded against other people who they
8 claim are as culpable, if not more culpable, than Mr.
9 Zammass and Mr. Rodman.

10 MR. LOWE: Perhaps Mr. Berger would like to put
11 me on the stand, since I am in charge of all of these
12 investigations.

13 MR. BERGER: I intend to put Mr. Curran on the
14 stand, your Honor.

15 MR. LOWE: I doubt you will find he has much
16 personal knowledge of these cases.

17 MR. BERGER: If he tells me someone else does,
18 that is the person I will put on the stand.

19 THE COURT: You are suggesting that since this
20 is the first time, apparently, the Government has invoked
21 77Q, that amounts to selective prosecution?

22 MR. BERGER: Partially, your Honor, yes.
23 The other part is not that it is the first time, but they
24 are not proceeding and have no intention to proceed against
25 any of the other individuals who are as culpable if not more

1 rmb-3

2 culpable than these defendants.

3 MR. LOWE: I am prepared to swear under oath
4 right here and now that the United States Attorney's
5 office for this District has every intention of proceeding
6 against other individuals and I don't think that you have
7 to go any further in calling witnesses, since you may call
8 Mr. Edwards and Mr. Curran to find out I am in charge of
9 the Value Line investigation, and I have made the decisions,
10 more or less, in that investigation and I would be happy
11 to testify as to the thought process behind some of those
12 decisions, if you really want to know.

13 MR. BERGER: I would be satisfied if you would
14 make a representation that there is a present, on-going
15 grand jury that is looking into the specific violation,
16 77QB, involving the ten stocks that Mr. Aiken testified he
17 accepted bribes on, and that this grand jury has already
18 commenced and is not about to be commenced.

19 MR. LOWE: All right, there is a grand jury
20 which is currently sitting which has heard evidence,
21 although not on all ten of those stocks that you are talking
22 about.

23 MR. BERGER: And that is against people other
24 than -- I withdraw that. What I mean is, that is for a
25 77QB violation, based upon testimony of Mr. Aiken?

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2 MR. LOWE: And others.

3 MR. BERGER: On the cases that we heard in
4 this court?

5 MR. LOWE: And others.

6 MR. BERGER: I am satisfied with that repre-
7 sentation.

8 THE COURT: So your motion is withdrawn?

9 MR. BERGER: No, your Honor, but I would go
10 ahead and take his representation -- will you also represent
11 that Mr. Aiken has been before that grand jury?

12 MR. LOWE: No.

13 MR. BERGER: Will you represent he has not been
14 before it?

15 MR. LOWE: Yes.

16 THE COURT: I will not hear your motion until
17 you write it out. We don't take any such motions at this
18 juncture of the trial. That motion should have been made at
19 the beginning, before the trial commenced, and here you
20 are, off the top of your head, and mine too, bringing up a
21 major matter of this kind. It will not be decided or
22 even heard until you write it out and support it with
23 points of authority.

24 We will recess now until ten o'clock tomorrow
25 morning.

1 rmb-4a

2 MR. BERGER: Thank you for the opportunity,
3 your Honor.

4 (Adjourned to Thursday, July 31, 1975,
5 at 10:00 A.M.)

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rma

UNITED STATES OF AMERICA

vs.

WILLIAM ERIC AIKEN, et al RETURN TO COURT REPORTERS
ROOM 803 FOR FILING

New York, July 31, 1975,

10:10 a.m.

Trial resumed.

- -

(Jury not present.)

THE COURT: Are there any matters before
we bring in the jury?

MR. LOWE: I don't believe so, your Honor.

THE COURT: Do you have a witness?

MR. LOWE: Yes, your Honor.

THE COURT: Suppose you get your witness.
Bring in the jury.

I have your note, Mr. Berger, about 4:30,
and we will be recessing at 4:30 today.

MR. BERGER: Thank you, your Honor.

(Jury present.)

1 RMA

2 E L E N A J. F R E V O L A, called as a
3 witness by the government, being first duly sworn,
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. LOWE:

7 Q Miss Frevola, by whom are you employed?

8 A New York Life Insurance Company.

9 Q In what capacity are you employed?

10 A I am assistant vice president in the invest-
11 ment department.

12 Q How long have you been employed by New York
13 Life Insurance Company?

14 A Since 1951.

15 Q Showing you Government's Exhibit 9A for
16 identification, I ask you, with respect to the first
17 page, is that a record made and kept in the ordinary
18 course of the business of New York Life Insurance Company?

19 A Yes, it is.

20 Q And is it in the ordinary course of the busi-
21 ness of New York Life Insurance Company to make and keep
22 a record such as that?

23 A Yes, it is.

24 Q And specifically what kind of a record is
25 that?

rma

Frevola-direct

418

1
2 A This was a requisition to the purchasing
3 department to pay a bill which we had received from
4 Value Line Service for their service for the period of
5 one year commencing from January 1, 1972 to January 1,
6 1973.

7 Q Directing your attention to the second page
8 of the exhibit, can you tell us what that is?

9 A This is the cancelled check that we received,
10 that was returned to us from Value Line Service for the
11 amount in question, \$175.48.

12 MR. LOWE: The government offers 9A in
13 evidence.

14 MR. ENTIN: Defendant Zammass has no objec-
15 tion.

16 MR. BERGER: No objection.

17 THE COURT: Let it be received.

18 (Government's Exhibit 9A was received in
19 evidence.)

20 Q During the period of January, 1972 to January,
21 1973 did New York Life Insurance Company regularly receive
22 the Value Line Investment Survey?

23 A To the best of my knowledge, we did.

24 Q How did you receive it?

25 A We received it in the mail.

rma

Frevola-direct-cross

419

MR. LOWE: No further questions.

THE COURT: Any cross examination of this witness?

CROSS EXAMINATION

BY MR. ENTIN:

Q You testified that to the best of your knowledge it was received. Does that mean you personally did not check each and every issue to see that it came in?

A That is correct.

Q Can you say with absolute certainty that you received the september 29, 1972 issue of Selection and Opinion?

A To the best of my knowledge, we received it.

Q Did you personally see it?

A No, I did not.

Q So it would be knowledge based upon what somebody may or may not have told you, is that correct?

A We regularly receive all the publications that we subscribe to.

MR. ENTIN: Nothing further, your Honor.

THE COURT: Anything further?

MR. BERGER: No questions, your Honor.

1 rma

2 MR. LOWE: Nothing further, your Honor.

3 THE COURT: You may step down.

4 (Witness excused.)

5 MR. LOWE: The government calls Susan Aiken,
6 your Honor.

7 S U S A N R O B B I N S A I K E N, called as
8 a witness by the government, being first duly
9 sworn, testified as follows:

10 MR. LOWE: May I proceed, your Honor?

11 THE COURT: Yes, you may.

12 DIRECT EXAMINATION

13 BY MR. LOWE:

14 Q Mrs. Aiken, are you Eric Aiken's wife?

15 A Yes.

16 Q Are you also known as Susan Robbins?

17 A Yes.

18 Q Were you employed during the period of
19 September, 1972?

20 A Yes.

21 Q What was your business at that time?

22 A I was an officer and director of a member
23 firm, a New York Stock Exchange brokerage firm.

24 Q What was the name of the firm?

25 A Heine, Fishbein.

rma

S. Aiken-direct

421

Q Directing your attention to the night of
September 28, 1972 --

A Would you repeat that, please?

Q Directing your attention to the night of
September 28, 1972, what did you do that night?

A I went to the opera with Eric, my husband --
he wasn't my husband at the time; he was a date -- and
we saw the opera.

Q Who was singing?

A Martina Arroyo, A-r-r-o-y-o, my next-door
neighbor.

Q What did you do after the opera?

A We went to a restaurant called The Ground
Floor.

Q Prior to arriving at that restaurant, Mrs.
Aiken, did Mr. Aiken say anything to you about why you
were going there?

A Yes.

MR. ENTIN: Your Honor, at this point I
object to anything further without the limiting instruc-
tion as to the conversation between Mr. Aiken and at
that time his fiancée.

MR. LOWE: I have submitted a memorandum
in connection with this particular piece of testimony

rma

S. Aiken-direct

422

and it is offered for that purpose, namely, as a prior consistent statement by Mr. Aiken.

MR. ENTIN: Your Honor, I received no memorandum with regard to that.

MR. LOWE: You did, this morning.

(Pause.)

MR. ENTIN: Your Honor, may I have a moment to read this?

THE COURT: Yes.

(Pause.)

MR. ENTIN: Your Honor, may I approach the side bar?

THE COURT: Yes.

(At the side bar.)

MR. ENTIN: This memorandum indicates that the purpose of this testimony is to rebut the defense position that Aiken had previously lied. Aiken admitted committing perjury on the stand. What is there to rebut with that? I don't see that bringing in hearsay as to her state of mind or his state of mind is proper and admissible under the circumstances. There is no need to rebut here.

1 THE COURT: Is that your objection to the
2 admissibility of this?
3

4 MR. ENTIN: Yes, your Honor, and the fact that
5 it is hearsay.

6 THE COURT: Overruled. Do you have an objection?

7 MR. BERGER: Your Honor, I object due to the
8 fact that the cross-examination of Mr. Aiken was a general
9 cross-examination for the purpose of discrediting him and
10 if it has in fact discredited him, there is no prior
11 statement necessary, prior statement to rehabilitate him
12 and it would have to be a prior statement made by the
13 witness, not by someone else.

14 What the Government is now offering is not a
15 prior statement of the witness, but the statement of a
16 different witness and therefore it is not a prior statement
17 for the purpose of showing that he had made the statement
18 once before.

19 This is different testimony.

20 THE COURT: Overruled.

21 MR. ENTIN: Your Honor, may I have an opportunity
22 to file a memorandum in opposition to this and later move
23 to strike if I find authorities supporting my position?

24 THE COURT: Yes.

25 (In open court.)

rmb-2

S. Aiken-direct

1
2 Q Mrs. Aiken, what did Mr. Aiken tell you about
3 why you were going to the Ground Floor Cafe?

4 A He told me he was meeting a person called Tommy
5 Zammass and that he was going there to pick up some money.

6 Q Did he tell you anything else?

7 MR. ENTIN: Your Honor, I still think I am
8 entitled to the limiting instruction as to why it is
9 offered at this point.

10 THE COURT: Well, I think I have instructed
11 the jury repeatedly and you have a continuing objection as to
12 the admissibility of any statement made out of the presence
13 of your client. I have instructed the jury that such
14 statements are admissible subject to connection, and if
15 that is the objection you are making, then I am repeating
16 it and I think the jury understands now, but you can make
17 the objection, same ruling.

18 MR. BERGER: May it please the Court --

19 THE COURT: You want it applied to your client?

20 MR. BERGER: No, because there has been no
21 testimony concerning my client. I just wish to state
22 that the limiting instruction is not the one given before,
23 but simply the instruction that this evidence is not intro-
24 duced for the purpose of the truth of the matter asserted,
25 but simply to show a prior consistent statement.

1 rmb-3

S. Aiken-direct

2 MR. LOWE: That is not the Government's
3 position, your Honor. According to the Federal rules
4 of evidence this testimony is admissible as substantive
5 evidence in the case.

6 MR. BERGER: I object to that.

7 THE COURT: Yes, the Government's position
8 is correct.

9 Let's proceed.

10 Q Do you recall whether Mr. Aiken told you any-
11 thing else?

12 A Yes.

13 Q What did he tell you?

14 A He had a manila envelope with him, under his
15 arm, and he said he was giving the writeups that he had
16 done that week to Tommy and he was also -- Tommy had some-
17 body with him, and we were going to meet her too.

18 Q Did you meet anyone at the Ground Floor Cafe
19 restaurant?

20 A Yes. When we got there we sat down and I had
21 some dinner, ordered my favorite shrimp dish there, and
22 we sat for about ten minutes and then Tommy Zammass and a
23 young lady named Dusty -- I think that is her nickname --
24 came in and sat down at the table.

25 Q Do you see Mr. Zammass in the courtroom today?

rmb-4

S. Aiken-direct

1
2 A Yes.

3 MR. ENTIN: Defendant Zammass concedes identi-
4 fication.

5 MR. LOWE: Thank you, Mr. Entin.

6 Q Tell us what happened after Mr. Zammass and the
7 woman named Dusty got there.

8 A Sat for a few minutes, exchanged pleasantries,
9 and then Mr. Zammass and Mr. Aiken got up from the table
10 and left, left us there to make small talk for a while.

11 Q How long were you they gone?

12 A It seemed like about 20 minutes to a half hour,
13 and I got up to look for them and they were not in the bar
14 area and I asked one of the waiters, because it was very
15 late in the evening, and there were very few people in
16 the restaurant, to go into the men's room and look for
17 them, and I went back to the table, and then I got fidgety
18 and I got up again and they were standing at the bar talking
19 and laughing, "they" meaning Mr. Zammass and Mr. Aiken.

20 Q What happened then?

21 A I said, "Come on, let's pay the check and
22 get out of here."

23 It was late and I was tired. The two men
24 came back to the table and waited for the waitress to come
25 over and in the meantime Mr. Aiken gave, in front of Dusty

1 rmb-5

S. Aiken-direct

2 and I the manila envelope with the Power Conversion
3 writeups in it to him, and then the check was paid and
4 we all walked out together and they left separately,
5 and we left separately.

6 Q What happened when you left the restaurant?

7 A Mr. Aiken had an envelope, an oversized white
8 envelope, in his breast pocket of his suit, up in here
9 (indicating), and he lifted it out and he opened the enve-
10 lope to show me the money he had, and it seemed like a lot
11 of bills in that envelope.

12 Then finally he told me that he had received,
13 I think it was, \$14,000.

14 Q Did Mr. Aiken have that envelope with him when
15 he got to the Ground Floor?

16 A No, he didn't.

17 Q Did Mr. Aiken give you anything that night?

18 A Yes, he did. He gave me \$2000 in fifties and
19 hundreds.

20 Q Where did that money come from?

21 A It came out of the envelope.

22 MR. LOWE: I have no further questions.

23 MR. ENTIN: Just one second, your Honor, and
24 I will be ready.

25 THE COURT: All right.

rmb-6

S. Aiken-cross

428

(Pause.)

CROSS-EXAMINATION

BY MR. ENTIN:

Q Good morning, Mrs. Aiken. My name is Mr. Entin.
I represent Defendant Zammass.

Mrs. Aiken, you recall the evening in question
primarily because you had gone to the opera that night?

A Yes. As a matter of fact I had never seen
my neighbor perform and it was my first time. We had become
very friendly and I was quite excited about it.

End 1B

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Q She is a soprano, is she not?

A Dramatic soprano.

Q What was the opera you saw?

A La Forza del Destino.

Q Are you sure it wasn't Un Balla de Masgrada?

A If it is the opera where she wears the red
cape and sings in front of the kettle, it would be La
Forza del Destino.

Q Have you seen her subsequently?

A No.

Q You have not?

A No.

Q Do you go to the opera often?

A I used to. Not any more.

Q Now, you indicate that when you went there
that evening, at that point you were not married to Eric
Aiken, is that correct?

A That is correct.

Q You were his fiancée, however, at the time?

A If you want to use that expression, yes.

Q Were you in the habit of discussing business
with him at that time?

A We were in related fields. We both understood
each other's business, so it might have transpired.

hpb-2

S. Aiken-cross

430

Q You sold stock, did you not?

A Yes. I was also an analyst.

Q And he edited of course Selection and Opinion, is that correct?

A That is correct.

Q Prior to the time articles would be published in Selection and Opinion, did he give you advance notice of these?

A No.

Q At no time?

A My kind of business was separated from his type. I didn't have any retail clients that could benefit off these smaller type stocks or retail-oriented type stocks. I dealt with institutions on huge blocks of stock so it was not to anybody's advantage to use that information.

Q How long had you known Mr. Aiken prior to September of 1972?

A About four months.

Q During that period of time, had he conveyed to you any other instances where he may have received a gratuity for writing an article?

A I don't remember.

Q You don't remember? Does that mean he may have?

1
2 A A lot has transpired over the last couple of
3 years and it is difficult to put that in a time frame to
4 before the Power Conversion situation.

5 Q Were there instances after Power Conversion
6 when he told you he had received a gratuity in exchange
7 for the writing of an article?

8 A Yes, because unfortunately, maybe fortunately,
9 maybe not for you but for us, I was the one that told the
10 SEC about the whole thing.

11 Q And that was because you loved him, is that
12 correct?

13 A That is correct.

14 Q And you would not commit a falsehood under oath
15 to help him, would you?

16 A I might.

17 Q You might lie under oath to help him. Are
18 you aware of the fact, Mrs. Aiken -- strike that.

19 Mrs. Aiken, isn't it a fact you already have
20 lied under oath for Mr. Aiken?

21 A If you are referring to the check incident --

22 Q No, Madam --

23 A What are you referring to? I want something
24 specific.
25

hpb-4

S. Aiken-cross

432

1 Q Yes, Madam. Was there pending an action in
2
3 Civil Court known as Aiken versus Allan?

4 A That is the check situation. At the time that
5 the motion was put in, I didn't know I was doing anything
6 illegal. It turned out afterwards it was illegal. I didn't
7 realize a bribe, you couldn't go after a phony check.

8 Q Madam, is it a fact or is it not a fact that
9 you signed a false affidavit in that particular case?

10 A Yes, I did.

11 Q Have you been prosecuted for that perjury?

12 A No, I haven't.

13 Q Mrs. Aiken, are you aware of the fact that the
14 nature and extent of Mr. Aiken's cooperation will reflect
15 on the amount of time he may or may not have to spend in
16 jail?

17 A I don't understand that. Will you please
18 repeat it?

19 MR. LOWE: I will object because I don't think
20 that necessarily is a fact.

21 MR. ENTIN: I think the witness can testify,
22 your Honor.

23 MR. LOWE: I believe the subject is relevant,
24 your Honor, but the question is phrased --
25

hpb-5

S. Aiken-cross

433

1 hpb-5 S. Aiken-cross 433
2 THE COURT: The witness says she doesn't under-
3 stand the question. Maybe you can rephrase it.

4 Q Mrs. Aiken, are you aware of the fact that
5 your husband's cooperation with the Government in
6 this case will have a certain amount of relevance to what
7 time he may or may not spend in jail as a result of his
8 participation --

9 MR. LOWE: Your Honor, my objection is that the
10 only fact that is a fact is that the cooperation will be
11 called to the attention of the sentencing Judge by the
12 Government.

13 I think it is improper to imply that it will
14 necessarily have any relevance or effect on the sentencing
15 Judge.

16 MR. ENTIN: Your Honor, I would prefer to
17 argue at the side bar.

18 THE COURT: The question, as the U. S. Attorney
19 suggests, should be whether the witness is aware that her
20 husband's cooperation with the Government will be brought
21 to the attention of the sentencing Judge.

22 MR. ENTIN: I will rephrase it exactly the way
23 the Judge asked it.

24 Q Are you aware that your husband's cooperation
25

hpb-6

S. Aiken-cross

434

in this trial will be brought to the attention of the sentencing Judge?

A Yes, but at the time that all this came out at the SEC, it is like dipping your toe in the water. You don't realize the whole foot goes in. At the time you didn't realize there was going to be a big case.

Q Were you with your husband when he lied at the beginning to Mr. Lowe about his involvement?

A I don't know if he lied or not.

Q Were you married to your husband when he testified before the Securities and Exchange Commission in Philadelphia?

A Yes, but I wasn't in Philadelphia and I don't know what happened there.

Q Did he inform you at that time that he had committed perjury there?

A No.

Q When did he first inform you that he had committed perjury?

A Well, actually I got it secondhand over hearing a conversation in the AG's office.

Q Attorney General?

A In Mr. Lowe's office.

Q You have been there quite a few times, have

hpb-7

S. Aiken-cross

435

1 you not?

2 A Yes.

3 Q AG's is an affectionate term that is used
4 around the office, isn't it?

5 MR. LOWE: Objection.

6 THE COURT: Let me hear the question.

7 (Question read.)

8 MR. LOWE: I don't think it is necessarily a
9 term of affection. I agree it is a slang, short --

10 Q It is a slang shorthand term that is used by
11 people in the Attorney General's office.

12 A I will change my words to the Attorney General's
13 office or Mr. Lowe's office, if you prefer.

14 THE COURT: You mean the United States Attorney,
15 Mr. Entin.

16 MR. ENTIN: Yes, your Honor. It was not the
17 Attorney I used initially. Mrs. Aiken used the term "AG,"
18 and I was inquiring into it.

19 Q Mrs. Aiken, you testified that on the evening
20 in question, Mr. Aiken received an oversized white envelope,
21 is that correct?

22 A That is correct.

23 Q Do you remember that clearly?

24 A Yes.

hpb-8

S. Aiken-cross

436

1
2 Q If I were to ask you are you sure it wasn't
3 a brown envelope, what would your response be?

4 MR.LOWE: I will object to that. Why
5 doesn't he just ask her instead of saying "If I were to
6 ask you."

7 Q Was it a brown envelope?

8 A No.

9 Q You are sure it wasn't a brown paper envelope?

10 A It was a heavy duty oversized white, long
11 envelope.

12 Q And you are 100 per cent sure of that?

13 A I am sure.

14 Q And you are sure that Mr. Aiken didn't have the
15 envelope when he went in?

16 A It was too bulky. You could see it from the
17 suit pocket.

18 Q Now, at the time you went into the restaurant
19 that night, did Mr. Aiken tell you that what was in the
20 envelope, he was allegedly bringing to Mr. Zammass, was
21 articles on Power Conversion?

22 A Yes, because I took it out and read it.

23 Q You took it out and read it. At that time did
24 you tell him, "Eric, I think you are doing the wrong
25 thing"?

1
2 A That came out much later.

3 Q So at the time you didn't think there was any-
4 thing wrong with it?

5 A I couldn't say one thing or another on it
6 because I wasn't married to him. It was not my place.

7 MR. ENTIN: Nothing further.

8 THE COURT: Any cross-examination, Mr. Berger?

9 MR. BERGER: No cross-examination, your Honor.

10 THE COURT: Any redirect?

11 MR. LOWE: No, your Honor.

12 THE COURT: Thank you, you may step down.

13 You are excused.

14 THE WITNESS: Thank you.

15 (Witness excused.)

16 MR. LOWE: The Government calls Mr. Wymbs.

17 R O B E R T J O H N W Y M B S, called as a witness
18 by the Government, having been first duly sworn, was
19 examined and testified as follows:

20 MR. LOWE: Your Honor, might I have one
21 moment to confer with my assistant.

22 THE COURT: Yes.

23 THE WITNESS: Excuse me, your Honor, have a bad
24 back and I am going to be moving around.
25

THE COURT: All right.

DIRECT EXAMINATION

BY MR. LOWE:

Q Mr. Wymbs, what was your business during 1972?

A During 1972 I was the owner of a computer forms company known as Centrex Business Forms, doing business also as Rotary Business Forms.

Q Besides that business did you have any other business interests during that year?

A Yes, I did.

Q What was that?

A I bought and sold stocks in various brokerage houses.

Q Do you know the defendant in this case, Thomas Zammas?

A Yes, I do.

Q Do you see him in the courtroom?

A Yes, I do.

MR. ENTIN: We concede identification.

MR. LOWE: Thank you, Mr Entin.

Q When and where did you first meet Mr. Zammas?

A I first met Mr. Thomas Zammas in the office of -- in the Woolworth Building, of Executive Securities or Executive Equities. I don't know the correct names, I

471a

hpb-10a

Wymbs-direct

438a

confuse the two names constantly.

In the office of Henry Goldfarb.

End 2A

t2b

1

hpal

2

Q

Was the name of that firm Equitable Equities?

3

A

Yes, it is, sir.

4

Q

Who introduced you to Mr. Zammass?

5

A

Mr. Donald Quest and Mr. Henry Goldfarb.

6

Q

Who are they?

7

A

The principal and two owners of the aforementioned brokerage house.

9

Q

Do you know the defendant in this case, William Rodman?

10

11

A

Yes, I do know Mr. William Rodman.

12

Q

Do you see him in the courtroom today?

13

A

Yes, I do.

14

MR. BERGER: Identification conceded.

15

MR. LOWE: Thank you, Mr. Berger.

16

Q

When and where did you first meet Mr. Rodman?

17

A

I met Mr. Rodman in the offices of C. I. Oren, in the trading room, which was located on Broadway in the City of New York.

18

19

20

Q

Who, if anyone, introduced you to Mr. Rodman?

21

A

I was introduced to Mr. Rodman by Mr. Zammass.

22

23

Q

After you met Mr. Rodman did you visit the offices of C. I. Oren from time to time?

24

25

A

After I met whom?

hpa2

Wymbs-direct

1

2

Q Mr. Rodman.

3

A Yes, I did.

4

Q During the period August and September of 1972 how often did you visit the offices of C. I. Oren?

6

A In the beginning of the period I started at approximately twice a week, and it progressed to the period of three to four, almost daily, sir.

9

Q Who did you see when you went there?

10

A When I went there, I saw Mr. Rodman. I normally saw Mr. Zammas. I saw Mr. Orenstein.

12

Q Who is Mr. Orenstein?

13

A Mr. Orenstein was, to my knowledge, the owner and chief executive of the company.

15

Q Of C. I. Oren?

16

A Of C. I. Oren, yes, sir.

17

Q During the period August and September, 1972, Mr. Wymbs, did you buy and sell the stock of Power Conversion, Inc.?

19

20

A Yes, I did, sir.

21

Q How did that stock first come to your attention?

22

23

A The stock first came to my attention, I was in the offices of Equitable Equities, and I was heavily involved in a stock called Mutual Oil and Kelly Jordan

24

25

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Wymbs-direct

2 and a few others, and it was suggested to me by Mr.
3 Goldfarb or his partner, that I buy some of the stock
4 called Power Conversion. I said fine, and I believe
5 I bought approximately two to three hundred shares of
6 stock at approximately \$23 per share.

7 Q Was that your initial purchase?

8 A That was my initial purchase of stock, yes,
9 sir.

10 Q Subsequent to that time did you continue
11 buying that stock?

12 A Not initially. About two weeks later,
13 myself and some other friends of Mutual Oil, a company I was
14 deeply involved with, which I was a director of, we sold
15 a stock and made or broke even, just about, on it.

16 Q Sold what stock?

17 A I sold Power Conversion, the stock I had
18 bought at 23. I sold it it, like 23-1/2, and just
19 about broke even on the stock.

20 Subsequent to that, I bought the stock through
21 various brokerage houses, approximately a month later,
22 sir, upon the advice of various brokers.

23 Q Did you have occasion to discuss this
24 particular stock with Mr. Zammass?

25 A Yes, I did.

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Q What, if anything, did Mr. Zammass tell you about that stock, Power Conversion?

A Basically, prior to speaking to Mr. Zammass, I was given reports --

Q Mr. Wymbs, please direct your answer to the question.

What, if anything, did Mr. Zammass tell you about the stock of Power Conversion?

A Mr. Zammass confirmed to me that the articles I had read were true, that they were an existing company, making batteries in Long Island some place, they just had a new facility built, they were a growing company, they were an expanding company, and it would be a good investment as a stock.

Q Did you ever have occasion to discuss the stock of Power Conversion with Mr. Rodman?

A Yes, I did.

Q What, if anything, did Mr. Rodman tell you about the stock?

A Mr. Rodman told me it was a very good investment and that it was going to go way up.

There are many conversations, sir, if you want me to recount them all.

Q How many conversations did you have with

1 hpa5

Wymbs-direct

2 Mr. Zammis about the stock of Power Conversion?

3 Approximately how many?

4 A I would say approximately 15.

5 Q How many conversations did you have with
6 Mr. Rodman about the stock of Power Conversion?

7 A I would say about the same, 15 to 20.

8 Q How much stock of Power Conversion did you
9 buy?

10 A I purchased approximately over 10,000 shares
11 of Power Conversion.

12 Q How much money did you invest?

13 A I invested -- the stock I purchased at
14 approximately \$33 a share, which would make it somewhere
15 around well over a quarter to a half million dollars
16 in Power Conversion that I invested, sir.

17 Q Did you sell the stock eventually?

18 A Eventually I bought and sold it over a
19 period of time, and towards the end, meaning the end
20 when it went out, I tried to sell it when I saw something
21 was going wrong with the stock and I was not able to
22 sell the stock, all of it. Some of it was sold.

23 Q Did you ever have occasion to visit an
24 apartment at 35th Street and Lexington Avenue in Manhattan?

25 A Yes, I did, sir.

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Wymbs-direct

1 hpa6
2 Q How many times did you visit that apartment?

3 A I visted that apartment, I would say, approxi-
4 mately 35 times, sir.

5 Q During the month of September, 1972 how
6 often did you visit that apartment?

7 A During September, 1972 I would say I visited
8 that apartment approximately 10 times.

9 Q During the times that you visited that
10 apartment whom did you see there?

11 A During the times, during the month of
12 September or totally, sir?

13 Q During the month of September, 1972.

14 A I believe on one occasion I saw Mr. Zammas'
15 girlfriend; definitely Mr. Zammas, Mr. Rodman, and once
16 a week -- one day I saw the maid that came in one day
17 a week.

18 In addition to that, I saw approximately
19 seven brokers or people that would come up to the
20 apartment. I was told they were brokers, and later
21 found out that some of them were, brokers or traders.

22 Q During the course of September, 1972 did you
23 have an occasion to hear any conversation in that
24 apartment regarding an article in the Value Line publica-
25 tion about Power Conversion?

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Wymbs-direct

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A Yes, I did.

3

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Q How many times did you have occasion to hear such conversation?

5

6

A In the apartment, approximately two or three times, sir. There were other occasions, other places.

7

8

Q Can you tell us approximately when the first such conversation that you heard took place?

9

10

A I would say the first conversation took place early in the month of September.

11

12

Q Who was having the conversation that you heard?

13

14

A The conversation I heard was at C. I. Oren initially.

15

16

17

MR. ENTIN: Your Honor, I object to the conversation without at least being told who the participants are.

18

19

THE COURT: Tell us who was present.

20

21

22

Q That was the question?

23

24

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A The first one, sir, was at C. I. Oren.

Present was Mr. William Rodman in the room, and another person on the phone who I did not know, and Mr. Zammas.

Q Was Mr. Zammas in the room?

A Mr. Zammas was in the room.

Q And this conversation, you say, you heard

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Wymbs-direct

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at the offices of C. I. Oren?

A Yes, sir, that was the first one.

Q What was that conversation? Who said what?

A Mr. Rodman speaking on the phone to another party, wanting to know when the article would be finished so that it could be published. That was the essence of the conversation.

Q When and where did the next conversation about the article take place that you heard?

A It happened approximately a week later in the apartment on 35th Street and Lexington.

Q Who was present at that time?

A At that meeting Mr. Rodman was present and Darnice Gennaro I believe was present.

Q Anyone else?

A Not at that meeting, no, sir.

Q Who is Darnice Gennaro?

A Darnice Gennaro I believe was an ex-trader to Equitable Securities, the other Equitable, and she was the girlfriend of Mr. Rodman.

Q What was that conversation?

A The conversation then was, was it printed yet in Asbury Park, was it completed, and was the money

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Wymbs-direct

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paid.

Q Who was having the conversation?

A This was a conversation between Miss Gennaro and Mr. Rodman.

Q When was the next conversation about the article that you heard?

A The next conversation was approximately around the 20th or so, within a few days after, at the apartment on 35th Street and Lexington.

Q Who was there at that time?

A Mr. Rodman, Mr. Zammis, and Miss Gennaro was there also.

Q What was that conversation?

A That conversation was to the effect that, again, what was the status, was it printed. There was a phone call in between and somebody was sending some approved copy down to Asbury Park, to pick up some of the sheets, and was the money ready. And an envelope was produced by Mr. Rodman that I saw, and I asked what was in it and I was told there was approximately \$5000 in it that was to be given to somebody at Value Line to publish the article or to get the article published. I was told the name of Mr. Perlmutter, or somebody, and I asked what the money was for and Mr.

1 Rodman said that it was for the publishing of the
2 article.
3

4 Conversation was had with Mr. Zammass. There
5 was a dining room, he was in the living room area, and
6 I asked what was the reason for this, and obviously he
7 said, well, in order to get the stock published or
8 promoted, if you will, to get people to know about it,
9 you had to advertise it and in advertising it one way
10 to advertise is to advertise in newspapers and Business
11 Week and Value Line.

12 Q Did you hear any more conversations about
13 the article?

14 A Yes, I did.

15 Q When was the next?

16 A The next conversation was some time around --
17 I'm trying to think of exact dates -- a few days later,
18 that it was all ready for printing --

19 Q Before you tell us the conversation, tell us who
20 was there?

21 A Mr. Zammass and Mr. Rodman.

22 Q What was that conversation?

23 A The conversation was where physically are
24 the Value Line brochures. And Mr. Rodman called some-
25 body in Asbury Park or called somebody in New York who

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Wymbs-direct

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1 called somebody in Asbury Park who called him back
2 and said they were on their way up or on their way
3 to the mail house. This was around the end of
4 September, sir.
5

6 Q Do you recall any conversations after that,
7 about this article?

8 A Not specifically, sir.

9 MR. LOWE: I have no further questions.

10 Excuse me, I do.

11 May we have this marked Government's Exhibit
12 15, please.

13 (Government's Exhibit 15 was marked for
14 identification.)
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1
2 Q I show you Government's Exhibit 15 for identification.
3 Can you identify that?

4 A Yes, sir.

5 Q What is it?

6 A This is a card of Thomas G. Zammass, financial
7 consultant, specializing in equity concepts, with a
8 Miami address on it and a phone number.

9 Q Did you receive such a card from Mr. Zammass?

10 A Yes, I did.

11 MR. LOWE: The government offers 15 in
12 evidence.

13 MR. ENTIN: Objection, your Honor. This
14 has not been identified as to time or place. It could
15 have been received last week or three years ago.

16 Q Approximately when did you receive a card
17 like that from Mr. Zammass?

18 A I believe I received that card at the time
19 when a presentation was made to Mutual Oil with re-
20 spect to giving advice and promotional and advertising
21 material as to the stock, Mutual Oil.

22 Q When was that, in time?

23 A That, in time, was some time, I believe,
24 in August.

25 Q Of what year?

1 A I'm sorry. It was 1972, and the month --
2
3 I don't have the exact time. I would say some time
4 during August of '72, in the offices of Equitable Equi-
5 ties.

6 MR. ENTIN: No objection, your Honor.

7 THE COURT: Mr. Berger?

8 MR. BERGER: No objection.

9 (Government's Exhibit 15 was received in
10 evidence.)

11 MR. LOWE: I have no further questions.

12 MR. BERGER: May it please the court, may
13 I have a five-minute recess?

14 THE COURT: Yes. The jury is excused
15 for five minutes.

16 (The jury left the courtroom.)

17 MR. LOWE: Your Honor, I would like to make
18 an announcement, after this witness leaves the room.

19 THE COURT: You may be excused for
20 five minutes. Go in the witness room.

21 (The witness left the courtroom.)

22 MR. LOWE: Your Honor, the government's
23 next witness, after Mr. Wymbs, I have been advised,
24 intends to exercise her privilege under the Fifth Amend-
25 ment of the Constitution. Having been so advised,

1 I have obtained the necessary authorization to request
2 the court to grant that witness immunity, so that I
3 would request after this witness has testified the jury
4 be excused, the next witness, a Miss Steffanie Palumbo,
5 be called in out of the presence of the jury, at which
6 time we can go through the procedure of granting her
7 immunity and the jury can then be called in.
8

9 THE COURT: Does she have a lawyer?

10 MR. LOWE: Yes, your Honor.

11 THE COURT: Does the lawyer know about
12 the application?

13 MR. LOWE: Yes, your Honor, and her
14 lawyer is here in court.

15 MR. BERGER: May I bring one thing to
16 your Honor's attention? It is possible that certain
17 of the questions that I will be asking Mr. Wymbs may
18 elicit answers that could incriminate him with regard
19 to various transactions in his business as a broker,
20 in forms and documents, business forms, and I don't know
21 if Mr. Wymbs has an attorney with him but --

22 MR. LOWE: He does not.

23 MR. BERGER: Well, I believe that he
24 should be apprised of his Fifth Amendment privilege or
25 he might incriminate himself.

1 rma

2 THE COURT: Does he have some understand-
3 ing with the government about his testimony?

4 MR. LOWE: No, your Honor, he does not.

5 THE COURT: Well, we will take that up
6 then. Do you want your recess?

7 MR. BERGER: Yes. One more point. Is
8 there a rap sheet on Mr. Wymbbs?

9 MR. LOWE: I don't have one and I don't
10 believe he has one.

11 MR. BERGER: Thank you.

12 (Recess.)

13 THE COURT: Bring in the jurors, please.

14 (Jury present.)

15 R O B E R T J. W Y M B S resumed.

16 CROSS EXAMINATION

17 BY MR. ENTIN:

18 Q My name is Mr. Entin and I represent Mr.
19 Zammas.

20 You testified a few moments ago that you
21 first met Tom Zammas in the Woolworth Building, at the
22 office of Equitable Equities, where you were introduced
23 to Mr. Zammas by a Mr. Goldfarb, is that correct?

24 A Yes, sir.

25 Q At the time you were introduced to Mr. Zammas

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Wymbs-cross

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1 were you introduced to him as a member of that firm?

2 A No, sir.

3 Q Isn't it a fact that you were introduced
4 to Mr. Zammass as being another investor who did business
5 with the firm, somewhat like yourself?

6 A Yes, sir.

7 Q And Mr. Zammass' purpose there was to see
8 his broker, just as the purpose of your going there was
9 to see your broker?

10 MR. LOWE: I object. I don't think he
11 can testify to Mr. Zammass' purpose.

12 THE COURT: Yes.

13 Q Were you told what Mr. Zammass' purpose was
14 there --

15 MR. LOWE: I object on the grounds of
16 hearsay.

17 Q Did Mr. Zammass tell you what he was there
18 for?

19 A To buy stock.

20 Q Through a broker?

21 A Yes, sir.

22 Q You said you had known Mr. Rodman through
23 C. I. Oren?

24 A Yes, sir.

1 rma

2 Q Was Mr. Rodman a broker at C. I. Oren?

3 A Define the term "broker," sir.

4 Q Buy and sell stocks for other people's ac-
5 counts.

6 A Yes, sir.

7 Q Did Mr. Zammass have a desk at C. I. Oren
8 of his own?

9 A No, sir.

10 Q When Mr. Zammass was at C. I. Oren at the
11 same time you were there, did you observe him placing
12 orders with brokers for stock?

13 A Yes, sir.

14 Q You never saw him do a placement of an order
15 for himself, did you?

16 A Yes, sir.

17 Q When did you see that?

18 A Well, excuse me, would you ask the question
19 again?

20 Q Did you ever see him place an order for him-
21 self as though he were a broker?

22 A No, sir. He placed an order for himself
23 within C. I. Oren by telling someone to do something,
24 to place an order for his account.

25 Q You indicated before that you had a fairly

1 substantial position in the stock of Power Conversion,
2 is that correct?
3

4 A Yes, sir.

5 Q And you lost a significant amount of money
6 as a result of your position in the stock of Power Con-
7 version, is that correct?

8 A Yes, sir.

9 Q To your own personal knowledge, did Mr. Zammas
10 lose a great deal of money as a result of his purchases in
11 Power Conversion, Inc.?

12 A Yes, sir.

13 Q Based on your knowledge?

14 A Yes, sir.

15 Q You testified to several meetings and con-
16 versations with my client, Mr. ammas. What sort of
17 conversations were these, the 15 conversations when
18 you and he discussed Power Conversion?

19 A Well, to start off with, I wanted to know
20 what kind of a company it was, what they did. He
21 explained to me that the two people had left American
22 Cyanamid and had formed their own company and that
23 they were in the business of making batteries of a
24 special type.

25 Q When you spoke to him, did you speak to him

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2 as if he were your broker and did you speak to him as
3 if he were another person buying the stock and inter-
4 ested in it?

5 A I spoke with him as a person whom I knew
6 had a large position in Power Conversion, whom I was
7 told had a large position in Power Conversion, by Mr.
8 Goldfarb and Mr. Rodman and himself.

9 Q But the bulk of the remainder of the conver-
10 sations that you had with him, those were not a series
11 of meetings where you got together and he tried to talk
12 you into buying stock, was it?

13 A Not as such, except that he would tell me
14 that, like in Business Week, I believe an article would
15 be coming out on Power Conversion and that this should
16 have a significant effect upon it, and that a
17 meeting was being held with the Chemical Bank, or Manu-
18 facturers Hanover, one of the large banks, and Power
19 Conversion was being presented to the portfolio manager,
20 which I double checked by calling my broker at Lehman
21 Brothers and finding out that Lehman Brothers was one
22 of the agents, and having him call this man to see if
23 in fact the meeting was taking place, and I was assured
24 that it was.

25 Q So at no time during these 15 conversations

1
2 did Mr. Zammass inform you of anything that you couldn't
3 cross check, is that correct?

4 A Would you say that again?

5 Q Whenever Mr. Zammass would talk to you
6 about this, and I assume it would come up in general
7 conversation, did you check what he told you with other
8 parties?

9 A Concerning the validity of Power Conversion,
10 yes, sir.

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Wymbs-cross

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Q And every time it checked out, did it not?

A Yes, it did.

Q You testified to some meetings that took place in an apartment at 35th and Lexington; as a matter of fact, you testified to three times in particular that you were there. The first time was early in September of 1972, is that correct?

A Yes, sir.

Q You indicated that at that time -- that was at C.I. Oren?

A Yes.

Q You said Mr. Zammass was in the room, is that correct?

A Yes.

Q You overheard, however, Mr. Rodman not talking to Mr. Zammass, was he?

A When I was there for a period of two hours a lot of conversations went on. At some points Mr. Zammass did speak with Mr. Rodman, at some times Mr. Rodman was constantly on the phone speaking, trading five or six stocks. A lot of conversations went on. If you have a specific one you want to speak to, I will answer, but I can't recall all of the conversations.

Q You indicated that if Mr. Rodman was in the

1 rmb-2

Wymbs-cross

2 room and he was talking to some other person on the phone
3 and you overheard him tell him something about an article --
4 is that correct?

5 A That's correct.

6 Q Mr. Zammas was in the room?

7 A Yes.

8 Q Was he on the phone with Mr. Rodman?

9 A No, he was not.

10 Q Was he listening to Mr. Rodman's conversation?

11 A Yes, he was.

12 Q He was hearing it the same way you were, is
13 that correct?

14 A Yes, he was.

15 Q Did he ask Mr. Rodman any questions after the
16 conversation about it?

17 A Yes.

18 Q What sort of questions did he ask?

19 A "When is the dam article coming out?"

20 Q Mr. Zammas asked that of Mr. Rodman?

21 A Yes, sir.

22 Q What did you respond?

23 A I did not respond, because you just indicated
24 the question was directed to Mr. Rodman.

25 Q What did Rodman respond?

rmb-3

Wymbs-cross

A Something about they were working on it.

Q How early was this in the month of September?

A I would say approximately the first week.

Q Around September 7th?

A I would say between the 1st and 7th.

Q But certainly not between the 7th and 14th?

A I would say even that the first meeting then might have been into the last week -- I would say towards the first, like towards the end of August.

Q Might have been towards the end of August?

A Yes. I am putting the period as the beginning. I did not take notes at the time, sir.

Q But you are sure it wasn't the middle of September, like September 14 or 15?

A On the first call, no, sir.

Q There was a second conversation you overheard with William Rodman and Darnice Gennaro?

A Yes.

Q What was the approximate time sequence of that conversation?

A About the 10th, or so -- approximately the 10th of September.

Q Are you certain that was before September 14?

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Wymbs-cross

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A I am not certain of that.

3

Q Could have been on September 14?

4

A It could have been.

5

Q Was Mr. Zammass there?

6

A At that meeting he was not there, no, sir.

7

Q Not present at all?

8

A That is correct.

9

Q Then you indicate there was a third conversation on or about the 20th of September, is that correct?

11

A Yes.

12

Q With regard to the second conversation, would it be fair to say that when you are saying the 20th of September you mean about a week after the second conversation or ten days after or --

16

A Approximately a week.

17

Q Week to 10 days?

18

A Yes, sir.

19

Q Mr. Rodman was there, Mr. Zammass and Miss Gennaro, is that correct?

21

A On the third meeting?

22

Q Yes, sir.

23

A Yes, sir.

24

Q When the conversation was taking place was Mr. Rodman calling somebody on the phone? Is that what you

25

Wymbs-cross

rmb-5

overheard?

A It didn't work that way. The way it worked, phone calls came into the apartment and Miss Gennaro would answer and say who it was and she would say, "Bill, do you want to talk with him?"

In this case she said, "Value Line," or something, or I don't recall whether it was Value Line -- it was something to do with Value Line, and he said, "I will take it."

Q What else did you hear from Mr. Rodman at that point?

A I did not hear any specific things outside of the fact that after the conversation was over -- or during the conversation the gist of it was, "Where is the article, we have to have it, is it in Asbury Park, is it printed, is it typed, who is typing it, can we pick it up"?

Q Did you hear him mention a name to somebody on the other phone?

A No.

Q Where was Mr. Zammass while this conversation was taking place?

A He was on the couch in the living-room.

Q Was he paying close attention to that conversation?

A He was watching television and I don't know how

rmb-6

Wymbs-cross

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much of it he heard.

Q He may not have heard it all?

A I could not testify to that, sir.

Q It was after that conversation that Rodman produced an envelope?

A Yes, sir.

Q Was that on that same day, the 20th, or approximately the 20th?

A Yes, sir.

Q Who was he talking to when he produced the envelope?

A At that point, he was speaking with Miss Gennaro and Mr. Zammass did come over to the table --

Q He came to the table?

A You are talking 10 feet, sir, 15 feet, and there was a white envelope with a large amount of dollar bills in it.

Q Did Mr. Rodman give the envelope to anyone?

A He gave it to Darnice.

Q What did she do with it?

A I don't know. All I was led to believe from Mr. Rodman, who was then speaking with Mr. Zammass, and I didn't hear the entire conversation -- I asked afterwards what was the -- I was led to believe --

rmb-7

Wymbs-cross

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1 MR. BERGER: Objection to what he was led to
2
3 believe, your Honor.

4 THE COURT: He is about to tell us. Proceed.

5 A I asked what was this for and I was told it
6 was for the cost for --

7 MR. BERGER: Objection, your Honor. I
8 would like to know who is speaking to whom.

9 A I specifically asked Mr. Rodman what was the
10 money for and he specifically said to me, "It is for the
11 Value Line article."

12 I said, "What happens to it?" And he said,
13 "None of your business."

14 Q Mr. Wymbs, you met with Mr. Rodman again a
15 few days later?

16 A Yes, sir.

17 Q At that time he told you the article had been
18 published, is that correct?

19 A It had been published or printed. I don't
20 know the terminology between what you consider published,
21 sir --

22 Q Was that September 24 or September 25?

23 A I would say approximately it was the last week
24 in September, that I was there, and I was told -- there
25 must have been five phone calls during the course of three

rmb-8

Wymbs-cross

hours finding out exactly what the state of the article was, whether it was just printed, put into books, or on its way up to some distribution point.

Q You mentioned a little bit earlier a company known as Mutual Oil.

A Yes, sir.

Q Did you introduce Mr. Zammass to that company?

A Yes.

Q Did you introduce him to that company as a financial public relations consultant?

A Yes.

Q To the best of your knowledge at the time, was Mr. Zammass a financial public relations consultant?

A Yes, he was.

Q What was discussed with regard to his potential activities with Mutual Oil?

A May I digress?

MR. LOWE: I object to the relevance.

THE COURT: Yes.

MR. ENTIN: I will approach the side bar, your Honor.

(At the side bar.)

MR. ENTIN: Your Honor, the proffered relevance is that it goes to the question of dealer, whether or not

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Wymbs-cross

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1
2 Mr. Zammas was a dealer in stocks or a financial public
3 relations consultant.

4 MR. LOWE: He could be both, under the law.

5 MR. ENTIN: I want to show he was a public
6 relations consultant, through this witness, and not a
7 dealer in stocks.

8 THE COURT: All right.

9 (In open court.)

10 MR. ENTIN: Would you read back the last
11 question.

12 (Record read.)

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End 3B

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2 MR. LOWE: I object to "digression." He
3 can answer the question.

4 THE COURT: Yes. I don't know what you had
5 in mind by digress, but you are here to answer the question.
6

7 THE WITNESS: Yes, your Honor. The question
8 again, I am sorry?

9 Q What was Mr. Zammass' potential responsibility
10 with Mutual Oil?

11 A Fine. I asked Mr. Zammass, since I was a
12 principal stockholder of Mutual Oil, and I was a member
13 of the board of directors of Mutual Oil, if he would come
14 and speak to the main stockholders of Mutual Oil and
15 see how he could help them obtain money for drilling opera-
16 tions.

17 Q And was it his purpose then to discuss with the
18 stockholders of Mutual Oil mergers, acquisitions, private
19 placements and business investments?

20 A Yes, but specifically the point brought to
21 bear was how to obtain money from investors to invest
22 in drilling funds so that Mutual Oil could continue to
23 drill for oil and hence stay in business.

24 Q Did you ever have any meetings with Mr. Zammass
25 relative to a company known as Kelly Jordan?

A I am sure that I discussed the subject with

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Wymbs-cross

1
2 him, but I do not recall any direct conversation specifically
3 only for that stock.

4 Q Do you recall a discussion with Mr. Zammass
5 with regard to investing in a picture called "Georgia"
6 being produced by Kelly Jordan?

7 A Yes.

8 Q You do recall that?

9 A Yes, sir.

10 Q What do you recall about that conversation?

11 A Another company which I invested heavily in
12 was a company called Kelly Jordan. Kelly Jordan was
13 a company who invested in black films for black audiences,
14 and I was approached by Mr. Sullivan, I believe, one
15 of the owners, of Kelly Jordan, if I would invest a million
16 dollars or a portion of a million dollars to mak four
17 pictures, one of which was "Honey, Baby," starring Diana
18 Sands, and there were three others. Amongst that I didn't
19 have a million dollars and I spoke to different people
20 I knew, one of which was Mr. Zammass, knowing that he did
21 or thinking he did have a large amonnt of money or, if he
22 didn't have money, he had contacts with people who had money
23 and if he could get together with them, and see if he
24 could find some other people to do it.
25

hpb-3

Wymbs-cross

I didn't, however, bring him directly
in relation with any of the principals of Kelly Jordan.

MR. ENTIN: Just one moment, your Honor.

Nothing further, your Honor.

CROSS-EXAMINATION

BY MR. BERGER:

Q Mr. Wymbs, my name is Mr. Berger. I represent
Mr. Rodman.

How old are you, Mr. Wymbs?

A Thirty-six years old, sir.

Q And what is your educational background?

A I have a degree from Rutgers University in
economics, and I have about a year towards my masters at
Seton Hall.

Q Are you married?

A Yes, I am.

Q Any children?

A Yes.

Q How many children do you have?

A I have four children.

Q You testified that you invested between a
quarter of a million and \$500,000 in a stock called Power
Conversion, is that correct?

A That is correct.

hpb-4

Wymbs-cross

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Q Does that mean that at any one time you had that much cash invested in that security, in that stock?

A No, sir.

Q In dollars, what was the most of your money that you had invested in the stock?

A What do you refer to as my money? Money that I would borrow from a bank? Would you consider that my money?

Q Yes, I would.

A I would say in that area of \$200,00 or so.

Q How much of that was borrowed money?

A I could not give you a percentage, sir, because it was sort of commingled.

Q What is the most money you ever borrowed from a bank in 1972?

A In 1972?

Q Yes.

A Totally or individually?

Q Totally.

A Oh, let's say about, I think it was a quarter of a million dollars from Chemical, and I think \$50,000 from Somerset Trust Company, \$10,000 from the Bank of North America -- I am sorry, maybe \$100,000, or \$150,000 from Chemical Bank and 50,000, I believe, from Somerset Trust

hpb-5

Wymbs-cross

Company and \$10,000 from the Bank of North America, approximately, sir.

Q This approximately \$150,000 that you borrowed from Chemical Bank, did you have to put up some security, collateral?

A Yes, I did.

Q What did you put up?

A I put up shares in five companies, I put up shares in Autotrain, I put up shares in Empire Apparel, I put up some shares, I believe, in Power Conversion and I put up shares in one or two others that I do not recall at the moment, sir.

Q What was the value of that collateral that you put up when you put it up?

A Approximately \$275,000.

Q And where did you get the \$275,000 to buy the collateral?

A I got that money by taking some of it from my business and by buying new issues and making money. For instance, Kelly Jordan came out at \$5 per share and it was sold at \$20 per share.

Q So then you could consider yourself a sophisticated investor, is that correct?

hpb-6

Wymbs-cross

A That is not correct.

Q How many securities have you dealt in, Mr. Wymbs?

A I have dealt in approximately 50 securities, sixty possibly. My account has.

Q Over a period of how much time?

A Two years. I was never really in the stock market until approximately a year and a half prior to '72, September.

Q During that period of time you say you invested up to close to a half a million dollars, is that correct?

A I didn't say that, sir.

Q You said between a quarter of a million and a half a million?

A Yes.

Q There is quite a difference between a quarter and a million and a half a million, isn't there?

A I believe so.

Q Which was it, did you invest a quarter of a million or half a million?

A Sir, if you would like me to check my records I can come back another time and give you a specific answer.

hpb-7

Wymbs-cross

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1 I can tell you this: At Dean, Witter, the net value of
2 my account prior to buying any Power Conversion at all,
3 was approximately \$150,000. I can tell you also
4 that my net value at Equitable Equities prior ot buying
5 any Power Conversion, was approximately 40,000 to
6 \$50,000 by value of slips, which can be verified.
7

8 Q In 1971 you filed an income tax return?

9 A No, I didn't, sir.

10 Q Didyou have any earnings in 1971?

11 A Yes, I did, sir.

12 Q Approximately how much?

13 THE COURT: Excuse me, just a moment. Approach
14 the bench.

15 (At the side bar.)

16 THE COURT: I belive before the recess we
17 took up the matter of my advising the witness of his consti-
18 tutional rights. Do you think I should do that at this
19 point?

20 MR. ENTIN: I don't think you knew this was
21 going to lead into that.

22 MR. BERGER: I had an idea. That is why I
23 want him advised of his constitutional --

24 THE COURT: I didn't get what you said.

25 MR. ENTIN: I thought it was going into some-

hpb-8

Wymbs-cross

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1 hpb-8
2 thing else.

3 MR. BERGER: I took a shot, but it was possible,
4 it was in the back of my mind.

5 THE COURT: Would you please let me in what
6 you are talking about?

7 MR. ENTIN: I said I didn't think Mr. Berger
8 knew it was going to come out right here. I thought he
9 was looking for something further down the road.

10 THE COURT: Do you think --

11 MR. BERGER: I believe he should be advised
12 of his rights, your Honor.

13 MR. LOWE: I have no objection, your Honor, and
14 I don't feel responsible for Mr. Wymbs. He is simply
15 here as a witness under subpoena. He is not a person who has
16 a relationship with the Government as many other witnesses
17 in this case do, and for that reason the Government
18 really doesn't have any position to take.

19 I think it would be appropriate for your Honor
20 to advise him, but the Government does not ask your Honor
21 to do it nor do we object to your Honor doing it.

22 THE COURT: So far he hasn't had any hesitancy
23 in answering the question.

24 MR. ENTIN: He may not be aware that it is
25 a crime.

hpb-9

Wymbs-cross

MR. BERGER: He should be advised by the Court.

THE COURT: All right.

(In open court.)

THE COURT: Mr. Wymbs, the Court would like to advise you at this point that with respect to these other matters, other than the matters involved in this instant case, that Mr. Berger is now going into with you with respect to your activities in other matters, the Court would like to advise you that you have a right to refuse to answer any question regarding those other matters, the answer to which might tend to incriminate you.

Do you understand?

THE WITNESS: Yes, your Honor. Thank you.

THE COURT: With that you may proceed. That doesn't relate to matters involved in this case, about which you have already testified, but these other matters that are not involved in this case. Do you understand?

THE WITNESS: Yes, your Honor.

BY MR. BERGER:

Q Mr. Wymbs, what were your earnings in 1971?

A I refuse to answer on the ground it might tend to incriminate me.

Q If I ask you any other question concerning your earnings, the source of your income in 1971, would you

hpb-10

Wymbs-cross

1 refuse to answer on the grounds that it might incriminate
2 you?

3
4 A Yes, I will.

5 Q Mr. Wymbs, did you have substantial income in
6 1972?

7 A During 1972?

8 y Yes.

9 A Substantial income?

10 Q Did you have income in 1972?

11 A Yes, I did have some income in 1972.

12 Q And did you file a tax return in 1972?

13 A I refuse to answer on the ground it may tend
14 to incriminate me.

15 Q If I askyou anyother question concerning your
16 income, the filing of your tax return in 1972, would you
17 again invoke your Fifth Amendment privilege?

18 A Yes, I shall.

19 Q Mr. Wymbs, did you have income in 1971 -- I am
20 sorry, 1970.

21 A Yes, I did.

22 Q Did you file a tax return in 1970?

23 A I refuse to answer on the ground it may tend
24 to incriminate me.

25 Q If I askyou any other questions concerning

hpb-11

Wymbs-cross

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1
2 your income in 1970, or anyother questions concerning the
3 filing of a tax return in 1970, would you again invoke your
4 Fifth Amendment privilege?

5 A Possibly.

6 Q How much did you earn in 1970?

7 A In 1970, sir?

8 Q Yes.

9 A I refuse to answer on the ground it may tend
10 to incriminate me.

11 Q Did you have any income in the year 1973?

12 A 1973, yes, I did.

13 Q Did you file an income tax return in 1973?

14 A I refuse to answer on the ground it may tend
15 to incriminate me.

16 Q If I asked you any additional questions concerning
17 your income in 1973, and the filing of a Federal tax return,
18 would you again invoke your Fifth Amendment privilege?

19 A It would depend upon the question you ask, sir.

20 Q How much income did you have in 1973?

21 A I refuse to answer on the ground it may tend
22 to incriminate me.

23 MR. LOWE: Your Honor, may we approach the
24 bench?

25 THE COURT: Yes.

(At the side bar.)

MR. LOWE: I am of the opinion that by having answered questions having to do with the financial dealings in the stock of Power Conversion and some other stocks in 1972, that as to his income in 1972, I think Mr. Wymbs has waived the privilege, and therefore may not properly invoke it although I suppose he may invoke it as to whether he filed a return and what he put on it. I think as to his income he has said enough that he may not invoke it as to the year 1972.

MR. ENTIN: I disagree, your Honor. The man wasn't cautioned as to his constitutional rights prior to the time he began to testify and might not have testified had he been so cautioned. He can't waive a right he was not informed of.

MR. LOWE: He was not in a position where it was necessary under any constitutional law that I know of to advise him of the right. He has previously been advised on a number of occasions of his rights by me.

THE COURT: That is why I said to him, what I was telling him at that point didn't apply to his testimony relating to this case. By taking the witness stand and testifying about Power Conversion, he has

1 hpb-13

Wymbs-cross

2 waived his right as to that and I thought I was making
3 that clear.

4 MR. ENTIN: I think Mr. Lowe is talking about
5 other income.

6 MR. LOWE: I know Mr. Wymbs is not a lawyer
7 and he doesn't understand necessarily what is related
8 to his dir-ct testimony.

9 I am suggesting that his direct testimony
10 contained enough about his financial dealings in 1972,
11 that as to what income he might have had in 1972, he
12 has waived the privilege and I think should be required
13 to testify as to that year.

14 MR. BERGER: Your Honor, firstly, Power Con-
15 version may not have been his income. It may have been
16 a loss. It may be part of his income, but, I think the
17 main factor here is, that there is no one here, among us
18 attorneys, who can counsel this witness and, therefore,
19 I will not state my opinion as to whether he has waived
20 or not. I think that is a legal question that he
21 must have his own counsel for. I can't venture an opinion
22 on it.

23 MR. ENTIN: Your Honor has set a precedent
24 earlier in the trial that I disagree with, but as your
25 Honor has set the precedent, your Honor may want to go

1 hpb-14

Wymbs-cross

2 back and give Mr. Wymbs an opportunity to call his attorney
3 and discuss it with him.

4 You gave Mr. Perlmutter the opportunity to
5 do it over objection.

6 MR. LOWE: I have no objection to that, but
7 I think you will find if you give him the opportunity
8 he would not avail himself of it because I don't think he
9 can call anyone on the spot.

10 MR. BERGER: Mr. Perlmutter was given the
11 opportunity and I think he should be given the opportunity.

12 THE COURT: We are going on with this.

13 MR. LOWE: I am somewhat disturbed by Mr. Berger's
14 position. If he is interested in soliciting information
15 he should be pressing for answers rather than have a
16 parade of questions where he knows the witness will take
17 the Fifth.

18 I suspect he is more interested in having the
19 witness portrayed taking the Fifth than --

20 MR. BERGER: You will have an opportunity to
21 redirect. I am not the United States Government. I am not
22 here for the purpose of eliciting a criminal case for the
23 Government. I am not going to go ahead and continue to
24 ask questions after --

25 THE COURT: Do you want him to answer the

hpb-14a

Wymbs-cross

question regarding his income in 1972?

MR. BERGER: certainly.

THE COURT: He is directed to answer then.

(In open court.)

End 4A

t4b 1

hpal

Wymbs=cross

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2

BY MR. BERGER:

3

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Q Mr. Wymbs, how much income did you have,
did you earn, in 1972?

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A I refuse to answer -- let me put it this
way: I am unable to ascertain that at this point until
a couple of things are ascertained as to specific claims,
as to stock houses, stock brokerage houses, for filling,
sell tickets and items of this nature. Therefore, I
can't give you any further information because I do
not have it.

Q Did you have income in 1972?

A Yes, I did, sir. I'll try and answer your
questions as honestly as I can.

Q Was it at least \$10,000?

A Yes.

Q Was it more than \$10,000?

A Yes.

Q Was it more than \$15,000?

A I do not have an exact figure and I cannot
go any further than that, sir.

Q But you did not file a tax return, is that
correct?

A Sir, I refuse to answer on the ground it
would tend to incriminate me.

hpa2

Wymbs-cross

1 Q In the year 1974, what did you earn in the
2 year 1974?

3 A I refuse to answer on the ground it would
4 tend to incriminate me.

5 Q In 1972, you testified, you owned a company
6 that went under the name of Centrex Business Forms or
7 Rotary Business Forms, is that correct?

8 A That's correct.

9 Q Where was that company located?

10 A That company was located at 217 Carol Jean
11 Way, Somerville, New Jersey.

12 Q Is that an office?

13 A I had an office in my home, sir.

14 Q And approximately what portion of your time
15 today did you spend in that business in 1972?

16 A It varied with the month, sir.

17 Q Exactly what did you do, what was the nature
18 of that business?

19 A The function of Centrex Business Forms was the
20 purchasing from a manufacturer of a raw material or
21 finished product being computer forms for snap sets, my
22 procuring a buyer and selling it to the buyer, having
23 it delivered to the buyer, invoicing the buyer, and then
24 collecting the money and making a profit.
25

hpa3

Wymbs-cross

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1 hpa3
2 Q In other words, you were in effect a broker?

3 A Would you define the term, sir?

4 Q You were a middleman?

5 A I was a middleman, yes, sir.

6 Q And did you have your company bill the cus-
7 tomer?

8 A My company, Centrex Business Forms, did all
9 the billing, yes, sir.

10 Q What were the names of some of your
11 customers?

12 A The names of some of my customers, Gilbert
13 Systems, Nelson Intermodel; those were two, sir.

14 Q You used to deal with the purchasing agent,
15 is that correct, of those companies?

16 A Upon some occasions.

17 Q Did you ever have occasion to deal with American
18 Express Company?

19 A Yes, I did, sir.

20 Q Do you recall the name of the purchasing
21 agent of American Express?

22 A The purchasing agent of American Express?

23 Q Yes.

24 A No, I do not.

25 Q Do you recall the name of the individual

hpa4

Wymbs-cross

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1 you dealt with?

2 A I believe I dealt with approximately five
3 people at American Express, one of which, I believe,
4 I don't know if he was vice president of purchasing or
5 purchasing agent, was Mr. William Kramer, and I believe
6 the assistant purchasing agent of American Express
7 was a Virginia Loge. Those I believe were the two
8 people of the highest nature that I knew.
9

10 I also dealt with the data processing
11 people of American Express, of which I can give you
12 their names.

13 Q Mr. Wymbs, did you ever bill American Express
14 for merchandise that was not delivered?

15 A I refuse to answer on the ground it might
16 tend to incriminate me.

17 Q Isn't it a fact, Mr. Wymbs, that you had
18 an arrangement with the purchasing agent at American
19 Express whereby you would bill him, you would bill
20 American Express, for merchandise that was not delivered,
21 they would issue a check to you, and you would give
22 cash to him? Is that true?

23 A No.

24 Q Would you issue a check to him?

25 A No.

hpa5

Wymbs-cross

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Q How did the kickback work?

A Sir, I object to the word "kickback."

I do not know what you are referring to and I will no further give you any further information along these lines because you are fishing and I think that you are going completely afield of this case and I will refuse to answer on the grounds along those lines.

MR. LOWE: Your Honor, I object to the speech by the witness and move it be stricken. Perhaps the witness should be instructed to answer the questions or refuse to, as he sees fit.

THE COURT: The U. S. attorney is correct. If you feel the answer to the question might tend to incriminate you, you may invoke your Fifth Amendment right you have been advised about. Don't make any speeches.

THE WITNESS: Thank you.

Q Wasn't the relationship between your company and yourself and American Express criminal in nature?

A I refuse to answer on the grounds it might tend to incriminate me.

Q Mr. Wymbs, when was the first time you appeared before either the U. S. Attorney's Office or the Securities and Exchange Commission with regard to the

1 stock Power Conversion?

2 A When was the first time? Approximately
3 three months ago, to the best of my recognition --
4 recollection, I should say. This can be confirmed
5 by the U. S. attorney general here.
6

7 Q Prior to that had you appeared before either
8 the SEC or the U. S. Attorney's Office with regard to
9 any other investigation?

10 A No.

11 Q Prior to that time had you had any contact
12 with either the SEC or the U. S. Attorney's Office?

13 A Yes, I had.

14 Q When was that prior contact?

15 A Approximately during the month of May, 1973.

16 Q And who contacted you then?

17 A Nobody contacted me then, sir. I contacted
18 them.

19 Q In May of 1973?

20 A Yes, sir.

21 Q And who did you contact?

22 A I went over to the U. S. federal building
23 and I went up to -- I asked what floor it was and asked
24 if I could speak with the Securities and Exchange lawyer,
25 and I asked to receive the names of a few lawyers that

hpa

Wymbs-cross

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were familiar with cases to do with SIPIC.

They gave me three names, which I had written down and I left.

Q And between that time and the time that you next--to February, I think, 1975, you had no contact in between with any member of the SEC or any assistant U. S. attorney, is that correct?

A I didn't say that, sir.

Q Well, did you?

A Yes, I did.

Q When did you?

A I received -- let's see now: approximately over the last three to five months I've had calls from Mr. Jack Lowe or Mr. Peter Shaeffer.

Q I asked you, Mr. Wymbs, between the time that you visited the offices of the SEC to get the name of an attorney to February, 1975, in that time period.

A Yes, I did. At one time I received a letter and I visited Mr. Shaeffer. I do not have the time. With Mr. Shaeffer was Mr. Lowe. I believe Mr. Shaeffer is with the SEC.

I apologize. I assumed he was with the U. S. --

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Wymbs-cross

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Q When was that?

A I do not have the date, sir.

Q Well, how long prior to February, 1975 was that?

A I do not remember, sir.

Q February is a winter month, am I correct?

A I would believe so, sir.

Q Did you meet with them in the summer? Was it hot out?

A I do not remember, sir.

Q Mr. Wymbs, you seem to remember these meetings so well. Why can't you remember something that happened a few months ago?

MR. LOWE: Objection. Argumentative.

THE COURT: Yes.

MR. BERGER: I'm sorry, your Honor. I withdraw that.

Q What was the discussion you had at that meeting? What was the purpose of the meeting?

A The purpose of the meeting? Which meeting, sir?

Q The one that you had with Mr. Lowe and Mr. Shaeffer prior to your February meeting.

A I believe the purpose of that was to discuss

hpa

Wymbs-cross

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1 a stock called -- to discuss various stocks, one of which
2 was Power Conversion.
3

4 Q Any other stocks?

5 A Yes, I believe there was another stock. I
6 believe Endicon was mentioned briefly, and I believe
7 Tom Jones, I believe, is the other stock. Tom Jones --
8 Tom Ward.

9 Q This is prior to your February meeting,
10 is that correct?

11 A February of when, sir?

12 Q '75.

13 A February of '75, yes, sir.

14 Q Did you have an attorney with you?

15 A I didn't have an attorney with me, sir.

16 Q Were you advised of your constitutional
17 rights?

18 A Yes, I was.

19 Q Did you make a statement? Were you asked
20 any questions?

21 A Yes, I was.

22 Excuse me. I 'm sorry. My first meet-
23 ing I had an attorney with me, Mr. S. Philip Klein,
24 of Somerville, New Jersey. I did have an attorney
25 at the first meeting with Mr. Jack Lowe and Peter Shaeffer,

1 hpa
2 I believe.

3 Q Can you now recall when that first meeting
4 was?

5 A No, I can't. It was at least two years
6 ago, sir.

7 Q You testified it was in response to a
8 letter, is that correct?

9 A I don't think I testified to that, but I
10 believe that is true.

11 Q And do you recall the contents of that let-
12 ter?

13 A That he wanted to see me.

14 Q Was there anything in that letter that
15 led you to believe that you should bring counsel with
16 you?

17 A Not to my knowledge.

18 Q Do you recall why you brought an attorney
19 with you?

20 A I brought an attorney because I wanted to
21 be advised of my rights.

22 Q Were you in fear that perhaps you were being
23 investigated by the Securities and Exchange Commission?

24 A No, sir.

25 Q What rights did you want to be advised about?

hpa

Wymbs-cross

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1 A That particular day, the attorney, Mr. Philip
2 Klein, was representing me in a divorce action in New
3 Jersey, and I was going over that afternoon, I believe,
4 or later that morning, and I asked if he would come with
5 me.
6

7 Q Are you divorced?

8 A I am divorced. I am also married.

9 Q So you had no reason to bring Mr. Klein --
10 Klein, is it?

11 A Mr. Klein.

12 Q -- to bring Mr. Klein with you except for
13 the fact he was with you that afternoon?

14 A Outside of the fact any time you receive
15 anything from the United States Supreme Court it must
16 be of some sort of significant nature and therefore it
17 would warrant what it was about and knowing my rights
18 and what it was concerning.

19 Q What did you receive from the United States
20 Supreme Court?

21 A Not Supreme Court. District Court. I
22 apologize for using the wrong verbiage. A letter
23 from Mr. Lowe's office. Whatever that is called.

24 Q You received a letter from the United States
25 Attorney's Office?

hpa

Wymbs-cross

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1 A That's correct.

2 Q And the meeting took place not at the SEC
3 but at the United States Attorney's Office, is that cor-
4 rect?
5

6 A That's correct.

7 Q And it was with Mr. Lowe, is that correct?

8 A I believe Mr. Lowe and Mr. Shaeffer was there,
9 and I believe it did take place at Mr. Lowe's office.

10 Q Now, do you recall whether a stenographer was
11 present at that meeting?

12 A I believe -- I do not know, sir. No,
13 I don't recall.

14 Q Do you remember what you were asked?

15 A I was asked nothing, sir.

16 Q They asked you no questions?

17 A None whatsoever.

18 Q Did you ask them any questions?

19 A None whatsoever.

20 Q Did they ask your attorney any questions?

21 A I believe they did.

22 Q Was he representing you at the time?

23 A Yes, he was.

24 Q Did you overhear the questions?

25 A No, I didn't, because I was outside.

hpa

Wymbs-cross

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1 hpa
2 Q Did your attorney tell you after the meeting
3 what they had asked him?

4 A No. He told me they might want to see
5 me again.

6 Q And you didn't know the subject of the
7 conversation that took place at that meeting?

8 A Only that there was a list of names on a
9 piece of paper that I received from Mr. Lowe, stating
10 if I knew Mr. Valachi and seven other, different people,
11 or something. That was, I believe, the initial letter
12 I received. If I knew Mr. Zammass, Mr. Valachi and a
13 whole bunch of other people.

14 Q Is there any reason why you didn't answer
15 Mr. Lowe at that time?

16 A At that time any answer?

17 Q Is there any reason why you didn't answer
18 Mr. Lowe at that time when he asked you those ques-
19 tions, when he gave you that list?

20 A No.

21 Q You just didn't feel like answering, is that
22 correct?

23 A I was never asked directly the questions.

24 Q Do you mean to tell -- withdrawn.

25 You received a letter to go down to the office

hpa

Wymbs-cross

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of the U. S. attorney and they asked you no questions, is that correct?

A That's correct.

Q And you don't know what questions they asked your attorney?

A That is correct.

Q Did you testify that you were given your rights?

A I was given my rights, yes. I was given my rights by Mr. Lowe when I went in to visit him the other day.

Q I am asking you about that meeting when you were there with Mr. Klein. You said you were given your rights?

A I believe I was, yes, sir.

Q Did you ask him, "Why am I being given my rights"?

A No, sir. I assumed it was a standard -- part of any standard procedure that lawyers go through.

Q Isn't it a fact that they gave you your rights because they were about to ask you questions? Is that correct?

A I don't know that to be correct, sir. If you say it is correct and the court says it's correct, it

hpa

Wymbs-cross

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1 hpa
2 must be correct, but I couldn't say it. Why don't
3 you ask Mr. Lowe?

4 Q Because he is not on the witness stand.

5 A Then I can't testify to what he says, can
6 I?

7 MR. LOWE: Your Honor, there seems to be
8 some kind of conversation going on which is well out
9 of the bounds of the normal question-and-answer relation-
10 ship. Perhaps your Honor could instruct the
11 witness as to the appropriate way to respond to the ques-
12 tions.

13 THE COURT: Well, I gather you intended
14 to answer that you could not read Mr. Lowe's mind. Is
15 that what you intended to say?

16 THE WITNESS: Yes, your Honor.

17 A I'm sorry. I couldn't speak for someone
18 else.

19 Q You were read your rights, is that correct?

20 A I believe so.

21 Q And then you must have turned to your
22 attorney, is that correct?

23 A Yes.

24 Q And what did you ask your attorney?

25 A I didn't ask him anything.

hpa

Wymbbs-cross

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1 hpa
2 Q What did he say to you?

3 A He said, "Would you please leave the room,"
4 because I had my wife and baby with me, and I left the
5 room.

6 Q Anyway, that day you made no statement,
7 is that correct?

8 A That's correct.

9 Q And then it was approximately two years later,
10 in February of 1975, that you again went before the SEC
11 and the U. S. Attorney's Office, is that correct?

12 A That is correct.

13 Q By the way, on that list, was the name William
14 Rodman on that list?

15 A I don't recall. I do not have the list
16 in front of me, sir.

17 Q Was the name Tom Zannas on the list?

18 A I don't recall, sir.

19 Q Was the name Power Conversion on the list?

20 A I don't recall, sir. I just remember the
21 name Valachi because I remember it, you know, from some
22 things in the paper.

23 Q Didn't you know Mr. Rodman and Mr. Zannas
24 well enough to remember their name if it was on a list
25 like that?

hpa

Wymbs-cross

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1 A Sir, I can't answer your question. I
2 do not recall. I have already testified I do not
3 recall the name was on the list. I still don't re-
4 call.
5

6 Q Did you ask your attorney whether he knew why
7 they were interested whether you knew the people on
8 that list?

9 A No.

10 Q And in that two-year period you never got
11 back to the U. S. Attorney's Office, is that correct?

12 A That's correct.

13 Q And they never contacted you again about
14 not answering the questions that day?

15 A That is correct. They were told -- I
16 believe I was told through my attorney if they wanted
17 me for any further action they would call me and be in
18 contact with me. When they so did, I responded.

19 Q Isn't it a fact that on that list was the
20 name Power Conversion, Thomas Zammis, and William Rod-
21 man?

22 A Sir, you have already asked me that question
23 three times and the answer each time was no, I do not
24 recall, and I have not changed my answer.

25 If you would like to get the list --

hpa

Wymbs-cross

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MR. LOWE: I object to speeches, your Honor.

THE WITNESS: I'm sorry.

MR. BERGER: Mr. Lowe, do you have the list?

MR. LOWE: I don't believe so. I'm not even sure I know what he is talking about, to tell you the truth.

Q At that meeting, back in 1973, you didn't tell Mr. Lowe or Mr. Shaeffer any of the facts about which you are testifying today, did you?

A No, sir.

Q You knew the facts then, didn't you? You knew them then?

A Excuse me?

Q I say you knew the facts then?

A What facts are you referring to?

Q Your testimony with regard to these conversations you overheard.

A Certainly I knew them then, sir.

Q Did you tell those conversations to Mr. Lowe and Mr. Shaeffer at that time?

A No, I did not, because I didn't speak to them. Remember?

hpa

Wymbs-cross

499

Q And you weren't about to, as a good citizen, tell them information you had concerning a crime, were you?

A I'm sorry, sir. I don't know what you are referring to as a crime.

Q Well, Mr. Zammis and Mr. Rodman are not sitting here today because they are being given an award.

A If you are assuming they created a crime, I can't assume that, sir. You are their lawyer. You should be saying --

Q Do you believe that the facts concerning which you testified today are criminal?

A Excuse me, sir?

Q Do you believe the facts concerning which you testified to today are criminal?

A No, sir.

1
2 Q You don't?

3 A No, sir.

4 Q Mr. Wymbs, you testified you were introduced
5 to Mr. Zammass by Mr. Don Quest, Mr. Henry Goldfarb, is that
6 correct?

7 A That's correct.

8 Q What was your relationship with Don Quest and
9 Henry Goldfarb?

10 A My relationship with them was that they, (a),
11 were my brokers; (b), I spent approximately two hours a day
12 there, sitting in their offices watching them trade.

13 Q For how long a period of time had they been
14 your brokers?

15 A They had been my brokers since I moved my main
16 account from Dean, Witter, which would have been approx-
17 imately two months, sir, three months, four at the outside.

18 Q Who was your broker at Dean, Witter?

19 A My broker at Dean, Witter -- you mean my agent?

20 Q Your customer's man.

21 A The brokerage house, the customer's man, was
22 Mr. Robert Morzec.

23 Q How long had you been with that brokerage house?

24 A I had been with that brokerage house since
25

1 rmb-2

2 Mr. Morzec came from Hornblower, Weeks, which would have
3 been approximately a year.

4 Q Had you been with that gentleman when he was
5 at Hornblower, Weeks?

6 A Yes. Mr. Morzec was my representative at Horn-
7 blower, Weeks. I believe I made one trade with him, when
8 I sold a share of something, and when he moved to Dean,
9 Witter he called me and asked me if I wanted to do any
10 additional trades, would I like to have lunch, and I
11 said yes, and he took me to lunch and I started doing some
12 trades.

13 Q Who was your broker before that?

14 A Moore, Schley, Cameron and somebody else.

15 Q How long were they your brokers?

16 A For approximately a five-year period, six-
17 year period.

18 Q Didn't you testify that you were not a sophist-
19 icated investor, you were only in the market for approx-
20 imately two years?

21 A That is exactly my testimony.

22 Q You have just testified, am I correct, that
23 you had a broker for five years before 1972?

24 A Yes, sir. If you were one or two --

25 MR. BERGER: Your Honor, I wish the witness

1 would be instructed just to answer the questions.

2 THE WITNESS: Okay.

3 MR. BERGER: He can be rehabilitated, if
4 it requires rehabilitation, by Mr. Lowe.

5 THE COURT: Do you want him to answer the last
6 question yes or no?

7 MR. BERGER: Not yes or no, but --

8 THE COURT: The question was, did you just
9 testify you had a broker for five ye. ars prior to 1972?
10 Do you want him to answer that yes or no?

11 MR. BERGER: Yes.

12 A No.

13 Q You didn't just testify to that?

14 A No. If you consider one trade a year a
15 broker, but I do not consider this to be my broker, if you can
16 understand the difference.

17 Q You did one trade a year ?

18 A Excuse me?

19 Q You did one trade a year?

20 A Which are you referring to now, sir?

21 Q Let's go back to 1968, how many trades did you
22 do?

23 A Okay. I would say now we are back into the
24 area of Moore, Schley, which was Dreyfus & Company prior
25

1
2 to that, and I would say maybe two trades in a year, three
3 at the very most, sir.

4 Q Were they large trades?

5 A No, sir.

6 Q How much was involved, in dollars?

7 A I don't know exactly, but I would say maybe it
8 was 100 shares or 200 shares of an item.

9 THE COURT: Mr. Berger, at this time we will
10 recess in this case until two o'clock, for lunch.

11 The jury is excused until two o'clock in
12 this case for lunch.

13 (Jury leaves the courtroom.)

14 MR. LOWE: Your Honor, now that the jury is
15 out of the room, I tried before putting Mr. Wymbbs on the
16 stand to instruct him on how to behave as a witness, as I
17 do with all the witnesses I call. Apparently my instruc-
18 tions went for naught or were not understood.

19 I wonder if we could explain to Mr. Wymbbs that
20 as a witness on the stand he is to reply to questions with
21 answers that are directed to the question and not to make
22 speeches, not to digress and not to volunteer information
23 that is not called for by the question he is asked?

24 It is very difficult, as your Honor must be
25

1 aware, to anticipate what he might be going to say unless
2 you know that he is going to answer the question, and
3 I can't very well object to some collateral, irrelevant
4 material if he just volunteers it.
5

6 I suppose what I said ought to serve as an
7 instruction.

8 THE WITNESS: I apologize.

9 THE COURT: I think so. The witness is excused
10 until two o'clock for lunch, and the lawyers in this
11 case are excused.

12 (Luncheon recess.)
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hpb-1

AFTERNOON SESSION
2:20 P.M.

505

(In open court; jury absent.)

R O B E R T J. W Y M B S resumes.

THE COURT: I will ask you to file this affidavit, and you may be appointed, Mr. Concannon.

Have you had an opportunity to speak with him?

MR. CONCANNON: Yes, I have, your Honor.

THE COURT: Would you bring in the jury.

(Jury present.)

THE COURT: You may proceed.

MR. BERGER: Thank you, your Honor.

CROSS-EXAMINATION (continued)

BY MR. BERGER:

Q Mr. Wymbs, in March, March 18, 1975, you met Mr. Lowe and Mr. Schaeffer, is that correct?

A I believe that is approximately the date.

Q Where did that meeting take place?

A I believe the meeting would have taken place in the office of Mr. Peter Lowe.

Q Mr. John --

A Are you referring to a document? Am I within my power --

Q To the best of your recollection, it was in Mr. Lowe's office?

1 hpb-2

Wymbs-cross

2 THE COURT: Just a minute. Are you saying --

3 THE WITNESS: I do not remember the exact
4 date. He is referring to a piece of paper. May I see
5 the piece of paper he is referring to?

6 THE COURT: The witness says he does not remember
7 the date. Maybe you can show him a piece of paper that
8 will refresh his recollection. Do you have any such paper,
9 Mr. Berger?

10 MR. BERGER: Part of the 3500 material, your
11 Honor.

12 THE COURT: Would that refresh his recollection,
13 perhaps?

14 MR. BERGER: I can show it to him (handing).

15 A Yes, I think that is the date.

16 Q Thank you. Did you go to that meeting as the
17 result of the communication that you received either from
18 Mr. Lowe or from Mr. Shaeffer?

19 A No. I went to it as the result of a phone
20 call from Mr. Shaeffer. I am sorry, from Mr. Lowe. I
21 apologize.

22 Q What did Mr. Lowe tell you on the telephone?

23 A Mr. Lowe said he would like to speak with me
24 concerning stocks.

25 Q And I assume thereafter did you make an

1
2 appointment to meet with Mr. Lowe?

3 A Yes, I assume the telephone tape -- phone
4 conversation took place prior to the 18th.

5 Q Did he tell you which stock he wished to
6 discuss with you?

7 A I do not recall exactly. I know a few were
8 mentioned.

9 Q Did you go to Mr. Lowe's office together with an
10 attorney?

11 A I went to Mr. Lowe's office without an attorney,
12 with my wife and my child, alone.

13 Q You went there with your wife and your child
14 alone?

15 A Yes, without an attorney I was referring to,
16 alone as opposed to with an attorney.

17 Q Before you were asked any questions, did Mr.
18 Lowe advise you of your privilege against self-incrimination,
19 your right to an attorney?

20 A Yes, he did.

21 Q Did he tell you there was an on-going investiga-
22 tion, that they were investigating possible stock manipu-
23 lations or stock fraud?

24 A He didn't mention the word "fraud." He mentioned
25

hpb-4

Wymbs-cross

they were looking into certain stocks, period. He never mentioned the word "manipulation" or --

Q Did he mention the word "wrongdoing"?

A No, he didn't.

Q Was it your impression that he was investigating to determine whether there was wrongdoing with regard to the stocks that you were being asked questions about?

A I was under the impression that he was trying to find out what transactions happened, and what stocks I had bought and what stocks other people bought and what I knew about certain stocks to determine whether or not there may or may not be any problem in the areas you spoke of.

Q Did he ask you about a stock Tom Ward, is that correct?

A Yes, he did.

Q Have you been involved in any criminal activity with regard to a stock Tom Ward?

MR. LOWE: Your Honor, I think that calls for a legal conclusion.

THE COURT: Yes. Sustained.

Q Did you manipulate that stock?

A No.

Q How many shares of Tom Ward stock did you own?

1
2 A I do not have my records with me, sir.

3 Q Did he ask you about a stock called Indecon?

4 A Yes, he did.

5 Q Did you manipulate that stock?

6 A No, I didn't, sir.

7 Q Did you participate in the manipulation?

8 A Would you determine the word "manipulation,"
9 sir?

10 Q Create a false market.

11 A No, I didn't, sir.

12 Q Did you warehouse any of that stock?

13 A Warehouse any of that stock? You mean putting
14 it into a warehouse? Would you define the term, sir?
15 I am a businessman. I warehouse forms, as I indicated,
16 and things of this nature.

17 THE COURT: Do you want the question answered?

18 MR. BERGER: I am looking for the 3500 material,
19 your Honor. It will take me one minute.

20 Q Did you take the stock into your name for
21 purposes other than holding it and owning it for your own
22 account?

23 A Yes.

24 Q I would like to get to the first time that you
25 met Mr. Rodman.

hpb-6

Wymbs-cross

Do you recall the approximate date?

A No, I do not.

Q Do you recall which year it was in?

A I believe it was in 1972.

Q Do you recall which month?

A I believe it was probably August, approximately, August I would say.

Q That was the first time you had met him?

A That is correct.

Q Prior to that time had you owned --

A I am sorry, excuse me. Let me think a second. Earlier in the year. It was not August. It was earlier in the year. I don't know exactly when, what month.

Q Prior to the time that you met Mr. Rodman, had you owned any Power Conversion stock?

A Yes, I had.

Q Which brokerage firm had you bought it through?

A I had bought approximately 100 shares through Equitable Equities and sold it through Equitable Equities.

Q Who recommended that stock to you?

A It was recommended by Henry Goldfarb and his partner, Allan Quest, I believe. Quite possibly 100 shares might or might not have been bought through my

hpb7

Wymbs-cross

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broker at Dean, Witter. I can't testify to that without getting the records. I don't believe so, however, since he had a discretionary account.

Q In total, how many shares of Power Conversion stock had you purchased before you met Mr. Rodman?

A I would say in the neighborhood of no more than a few hundred.

Q And had you purchased those stocks after discussing the merits of Power Conversion with brokers other than Mr. Rodman?

A To some degree.

Q Mr. Wymbs, are you taking any drugs for your back condition?

A Yes, I am.

Q Please tell me what drugs you are taking.

A Yes. Right now I am taking Doan's tablets for the back and I am taking Valium 10 mgmg.

Q How many Valium have you taken today?

A I have taken two today, sir.

Q What time did you take them?

A I took one approximately five minutes ago and I took one this morning when I came in.

Q Have you ever been arrested?

A Yes, I have.

npb-/a

Wymbs-cross

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Q Have you ever been convicted of a crime?

3

A No, I have not.

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End 1A

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Wymbs-cross

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Q You have never been convicted of a crime?

3

A I have not been convicted, no, sir.

4

MR. BERGER: Your Honor, may I have one

5

minute?

6

THE COURT: Yes.

7

Q Mr. Wymbs, have you ever pleaded guilty to

8

a crime?

9

A Yes, I have.

10

Q And when you pleaded guilty, did the court advise

11

you that a plea of guilty is the same as a conviction?

12

A I was not aware of that, sir.

13

Q What crime did you plead guilty to?

14

A I was in possession of stolen property.

15

Q When was that?

16

A Oh, over three years ago, I would say, sir.

17

Q Was it in 1973?

18

A I would say not. I would say '72, '71;

19

at least three years ago, I would say.

20

Q Was that conviction in a state court?

21

A It was in a municipal court.

22

Q Which state?

23

A It was not a state court. It was a munici-

24

pal court in the State of New Jersey.

25

Q It was a court in the State of New Jersey?

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A Yes, sir.

Q And will you describe the stolen property?

A It was a car.

Q Have you ever been arrested and --

MR. LOWE: Your Honor, I object to questions
as to arrests as opposed to convictions.

THE COURT: Sustained.

Q What sentence did you receive on your con-
viction?

A I received a two-year probation.

Q And when did your probation terminate?

A My probation terminated the 25th of July.

Q What year?

A 1975.

Q So therefore you were convicted in 1973,
weren't you, Mr. Wumbs?

A Not necessarily, because less than two years
was taken off for good behavior; in other words, because
I was a model citizen.

Q So therefore you must have been convicted
in 1974.

A The actual conviction might have happened
then. The actual act was approximately a year and
a half before.

1 hpa

2 Q I asked you when you were convicted of a
3 crime. Now, what date was that, do you remember?

4 A No, sir.

5 Q But it was in 1973 or 1974, was it not?

6 A I would say it would have to have been based
7 upon your logic, sir.

8 Q And you are a convicted felon, are you not?

9 A That's correct, sir.

10 Q Mr. Wymbs, are you being investigated for
11 stock manipulation and stock fraud with regard to a stock
12 called Tom Ward?

13 A I do not believe so, sir.

14 Q Are you sure that you are not being so
15 investigated?

16 A No, I am not sure.

17 Q What about a stock called Indecon?

18 A What is your question on Indecon, sir?

19 Q Are you being investigated for stock manipu-
20 lation, stock fraud, conspiracy, for a stock called Inde-
21 con?

22 A To my knowledge, no, sir.

23 Q Are you sure of that?

24 A No, sir.

25 Q You testified that you were not a sophisticated

hpa

Wymbs-cross

515

investor, is that correct?

A That is correct.

Q Did you ever testify before a stock exchange investigation on manipulation of secondary issues?

A Would you repeat that, please, sir?

Q Did you ever testify before a stock exchange commission investigating stock manipulations of secondary issues?

A To my knowledge, no, sir.

Q Did you ever testify with regard to a company called JAB?

A No, sir.

Q Did you ever do any business with a company called JAB?

A Yes, I did.

If you mean JAB Securities, yes, sir.

Q Did you ever testify with regard to any activities of JAB Securities?

A Before whom, sir?

Q Anybody any governmental agency or quasi-governmental agency, such as a stock exchange.

A Yes.

Q Before whom did you testify?

A I didn't testify as such, sir. I went

1 hpa
2 down and made a complaint against them with the
3 Secuties Exchange.

4 Q When was this?

5 A This was, I believe, during the first quarter
6 of 1973.

7 Q And as a result of that complaint that you
8 made against them, did you give testimony?

9 A Testimony, sworn testimony, no, sir.
10 I spoke to a gentleman -- go ahead, ask your question.
11 I have answered yours.

12 Q But you never testified before a stock ex-
13 change commission?

14 A No, sir.

15 Q They never asked you any questions about
16 warehousing secondary issues?

17 A No, sir.

18 Q They never asked you any questions about your
19 manipulating secondary issues?

20 A Who is "they," sir?

21 Q The people at the stock exchange, New York
22 and American Stock Exchange.

23 A No, sir.

24 Q Did any governmental agency ask you questions
25 about manipulating secondary stock issues?

hpa

Wymbs-cross

517

1 A No, sir.

2 Q What about shorting?

3 A Excuse me, sir.

4 Q What about shorting secondary issues?

5 A What is your question?

6 Q Were you asked any questions about any
7 governmental agency about shorting, selling short new
8 secondary issues or outstanding secondary issues?
9

10 A No, sir.

11 Q Do you know what a secondary issue is?

12 A Yes, sir.

13 MR. LOWE: At this point, your Honor, there
14 may be two people in the courtroom who do. There are
15 some who don't. Perhaps we all can find out what
16 a secondary issue is.

17 A I think I know.

18 Q What is a secondary issue?

19 A I believe a secondary issue is a second issue put
20 out after the first, which would make it No. 2.

21 Is that correct, sir?

22 Q I don't know.

23 A Oh, okay.

24 Q I am asking you.

25 When for the first time -- withdrawn.

hpa

Wymbs-cross

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Under what circumstances did you hear for the first time that an article would be coming out in Value Line concerning Power Conversion?

When I say "under what circumstances," I mean when and where and from whom, the first time.

A The very first time? I believe it was from Mr. William Rodman in the offices of C. I. Oren on Broadwa..

Q Under what circumstances was that, what date?

A During the trading date.

Q What do you mean by the trading date?

A The trading day.

Q What months did this occur in?

A This occurred late August, as I testified.

Q Late August?

A Yes.

Q How did you hear --

THE COURT: What year?

Q 1972.

A 1972.

Q And who was present with you and Mr. Rodman?

A Let's see now. There was an older gentleman there whose name I don't know, who did all the stamping of the tickets in and out, and I think Mr. Zammass was

hpa

Wymbs-cross

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1 in the room but he was in the back section.

2 Q And you overheard a conversation?

3 A No. Mr. Rodman told me directly when he
4 told me to buy the stock that I should buy it and that
5 was the reason why I should buy it because they were
6 working up an article on it and I should go in heavy.

7 Q When you testified before the SEC, and
8 the grand jury on June 18, 1975, you never told that
9 to the grand jury, did you?

10 A Excuse me, sir?

11 Q You never told that to the grand jury, did
12 you?

13 MR. LOWE: May I approach the bench?

14 THE COURT: Yes.

15 (At the side bar.)

16 MR. LOWE: Your Honor, when Mr. Wymbs
17 testified in the grand jury in 1975, the indictment in
18 this case had already been filed. It was my opinion,
19 my legal opinion, that it would have been improper to
20 use the grand jury to question him about the facts of
21 this case. I therefore did not. It was in the
22 grand jury this year related to another instance having
23 to do with the stock known as Endecon and Tom Ward.
24 He was not examined by the grand jury on the question
25

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Wymbs-cross

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1
2 of Power Conversion because of the fact the indictment
3 had been returned.

4 I don't think it is appropriate and fair
5 to suggest he did say something to the grand jury
6 when in fact he wasn't asked and it would have been
7 improper for him to have been asked.

8 MR. PERGER: I withdraw that question.

9 THE COURT: All right.
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(In open court.)

MR. BERGER: That question is withdrawn,
Mr. Wymbs.

Q When you testified on February 24, 1975 --
I'm sorry -- on February 25, 1975, before Mr. Lowe and
Mr. Shaeffer, you didn't tell them at that time that
Mr. Rodman had told you that an article was coming out
before you started buying stock, did you?

A I don't recall.

Q You didn't recall that on direct examination
either, did you? You didn't so testify on direct examina-
tion.

A I don't believe the question was asked in
that exact same way, counselor.

Q Isn't it a fact that you knew nothing about
the article in Value Line coming out until after it was
out?

A That is a direct lie.

Q Am I lying?

A If you are saying it is true, you are lying.

Q I asked you a question.

A I am sorry. I misunderstood you.

Q Isn't it a fact you knew about the article
in Value Line only after it came out?

1 rma

2 A That is not true.

3 Q Did you know about the -- when did you
4 first buy stock on the recommendation of Mr. Rodman?

5 A I don't have the dates, sir. I can check
6 them and get back to you.

7 Q You knew you were coming here to testify
8 today, did you not?

9 A Yes, I did.

10 Q Now, you have remembered the dates or approxi-
11 mate dates of three meetings, have you not?

12 A Yes, I have.

13 Q I am asking you, what is the approximate
14 date that you bought the first share of Power Conversion
15 stock on the recommendation of Bill Rodman?

16 A My answer is the same, I don't have the
17 records. However, it was prior to that date.

18 MR. LOWE: Prior to what date?

19 A I believe prior to the last week of
20 August.

21 Q So that you bought your first share of stock
22 prior to the last week in August?

23 A I believe so. I can only check this by
24 getting to the records.

25 Q Now, you are testifying, am I correct, that

rma

Wymbs-cross

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1 the first time you had heard of Power Conversion stock
2 was prior to the -- which week in August, third week in
3 August or last week in August?
4

5 A Would you like to have an answer to the
6 question of the first time I heard Mr. Rodman tell me
7 of Power Conversion stock, or specifically which week
8 in August?

9 Q I want to know when is the first time that
10 Mr. Rodman told you that Power Conversion stock would
11 be written up in Value Line?

12 MR. LOWE: That is a different question
13 from the one he asked before.

14 THE WITNESS: That is correct.

15 Q I will go back to the other one: When
16 is the first time he told you that that article would
17 appear in Value Line, the date?

18 A I would say it was within -- I can't pin
19 it down exactly -- within the last two weeks of the
20 month of August.

21 Q The last two weeks?

22 A Yes, sir.

23 Q Had you known about the article coming out
24 before Mr. Rodman told you that?

25 A No, I had not, not specifically. There

1 was rumor of an article, but not specifically.

2 Q Where did you hear this rumor?

3 A Well, I heard the rumor, (a) --

4 MR. BERGER: Withdrawn.

5 Q When did you first hear the rumor?

6 A The rumor about articles on Power or on this
7 specific --

8 Q On Value Line coming out with an article
9 on Power.

10 A Some time in early August.

11 Q How early?

12 A The first two weeks of August.

13 Q And it was approximately a week later that
14 Mr. Rodman told you an article was coming out, is
15 that correct?

16 A Approximately two to three weeks, sir, if you
17 go the first two weeks into the last two weeks. It
18 depends on how you interpret it.

19 Q Well, I will you please give me a date as
20 close as you can recall?

21 A I cannot, sir.

22 Q Was it in September?

23 A I cannot, sir.

24 Q But it was after you heard rumors elsewhere,

1 is that correct?

2 A Yes, sir, other rumors from Rodman.

3 Q Rumors of Mr. Rodman?

4 A Do you want to go into another periodical?

5 Q I will ask the questions.

6 MR. LOWE: Your Honor, could I have the
7 answer read back? I don't think I heard it or under-
8 stood it.
9

10 THE COURT: Yes.

11 (Answer read.)

12 Q You had testified that during the months
13 of August and September of 1972 you had bought Power
14 Conversion stock through the recommendation of Goldfarb
15 at Equitable Equities, is that correct?

16 A Yes, that is correct -- say that again, please?

17 Q You testified that during August and Septem-
18 ber of 1972 you bought and sold Power Conversion stock
19 that had come to you through the attention and sugges-
20 tion of Mr. Goldfarb at Equitable Equities. Didn't
21 you so testify on direct?

22 A Today?

23 Q Today.

24 A That is also true.

25 Q Were you --

1
2 THE WITNESS: Would you repeat the first
3 part of the question, sir, again?

4 Q Didn't you testify that approximately one
5 month after September of 1972 or August of 1972 you were
6 still purchasing Power Conversion stock upon the
7 recommendation of brokers other than Mr. Rodman?

8 A Not brokers, sir.

9 Q That was not your testimony.

10 A Brokers directed by Mr. Rodman, if you want
11 to be specific, because I never bought a share of stock
12 from Mr. Rodman, I don't think.

13 Q You were asked on direct what conversation
14 you had with Mr. Rodman concerning Power Conversion and
15 that he told you that it was a good stock, was a good
16 investment, is that correct?

17 A That is correct.

18 Q You didn't testify on direct that he told
19 you that an article was coming out on Power Conversion,
20 did you?

21 A I don't know, sir. I don't recall every
22 word I said, but it is true.

23 Q You said that you had approximately 15
24 discussions with Mr. Rodman concerning Power Conversion?

25 A Yes.

rma

A Yes.

Q Fifteen?

A Yes.

Q What was the first discussion?

A The first discussion was on the phone when I asked Mr. Goldfarb, when he asked me to buy it, "Tell me something about it," and I believe he put me on the phone with Mr. Rodman and Mr. Rodman told me that he traded it and it was a good stock.

Q You remember that clearly?

A Fairly clearly.

Q Fine. Let's get back to that meeting in 1973, a year later, when you were called down to the Securities and Exchange Commission. Let's see what you remember about that meeting now. You seem to remember 1972. Let's go to '73.

MR. LOWE: I object to an entire preliminary paragraph leading up to what may be a question.

THE COURT: Well, I think there was a question in the remark. If he can remember another period, let us see if he can remember this period. It is up to the jury to determine whether the witness properly reflects or whether his recollection is faulty or whether he is testifying truthfully and candidly, so please don't

comment.

MR. BERGER: I am sorry, your Honor.

Q The second meeting with Mr. Rodman, second of the 15, where did that take place?

A I don't have the names and places and times of all the meetings that have happened, sir, as you go through them.

Q But you recall approximately 15 meetings?

A That is correct, sir.

Q But that first meeting you do recall quite vividly?

A Yes, sir, and the remainder of them, most of them happened in either C. I. Oren's office or in the apartment on 35th Street and Lexington.

Q That was in 1972, was it not, in August?

A August, September and October, sir.

Q Let's go to your meeting at the SEC in 1973 --

A 1973, C. --

MR. LOWE: I have not heard any testimony to indicate this was a meeting at the SEC then. I believe he testified he came to the United States attorney's office with his lawyer at that time.

MR. BERGER: Fine. Withdrawn.

Q 1973, what month did you go to the office

1 of the U. S. attorney?

2 A The month I was summoned there.

3 Q What month was that?

4 A February, March -- I don't know. I don't
5 recall the exact month.

6 Q Do you recall the month you were divorced?

7 A No.

8 Q Was it the same month that you were divorced?

9 A I don't recall, sir.

10 Q Was your attorney with you when you went
11 to the U. S. attorney's office?

12 MR. LOWE: That was asked and answered
13 this morning, I believe.

14 THE COURT: I will let him answer again.

15 A Yes, he was.

16 Q Why was he with you?

17 THE COURT: We have been over this, Mr.
18 Berger, this morning. Asked and answered.

19 Q As a matter of fact, isn't it the truth
20 that you went to the office of the U. S. attorney because
21 you believed you were in trouble?

22 A That is not true.

23 Q Do you recall testifying that you had your
24 attorney there because he happened to be in court with you
25

1
2 that day?

3 A Yes, I do.

4 Q Do you recall testifying that you had been
5 divorced that day?

6 A I believe so.

7 Q Who else was at that meeting with you?

8 A I believe my wife was at the -- my current
9 now wife was at that meeting with me.

10 Q And your child or her child; was that your
11 testimony?

12 A I am trying to think. I said I am trying
13 to think if that was extremely accurate. One of the
14 children, but I don't recall exactly which. I can
15 refresh my memory by asking the U. S. attorney general
16 who was there and he can tell you.

17 Q Do you recall what you testified to this
18 morning, before the lunch break?

19 A Sir, the way you are twisting things and
20 going about them, it is very hard.

21 Q Do you recall what you testified to with
22 regard to whether your wife and your child and an attorney
23 was there this morning? Do you recall this morning's
24 testimony?

25 A Yes, I do.

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Q What did you testify this morning?

A That my wife and my child, and I think my baby, was with me.

Q What did you discuss at that meeting at the U. S. attorney's office?

MR. LOWE: Your Honor, I may be wrong, but I have the distinct feeling that we are skipping from one meeting to another without clearly so indicating in the record. Perhaps we could clarify, one way or another, exactly what meeting we are talking about, because it is clear that there was more than one meeting and I think we are mixing them up.

THE COURT: At the U. S. attorney's office there was more than one meeting?

MR. LOWE: There is no doubt about that, your Honor, there was.

THE COURT: Mr. Berger, let's talk about one meeting at a time.

MR. BERGER: Yes, your Honor.

Q The first meeting in 1973, what did you discuss at that meeting with Mr. Lowe?

A The first meeting with Mr. Lowe --

Q In 1973, at the U. S. attorney's office.

A I said hello to him, said, "How are you?"

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Wymbs-cross

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1 He said, "How are you?" I introduced Mr. Philip S.
2 Klein and he said, "How are you?" and he asked me to
3 wait outside and I did.
4

5 They talked, and I said, "Goodbye, Mr.
6 Lowe," and we left.

7 Q You mean you came inside and said goodbye?

8 A I wasn't sure if we physically came into
9 the door or stood at the doorway. I don't think it
10 really matters.

11 Q After you left with your attorney, what did
12 you say to your attorney?

13 A Privileged information.

14 MR. LOWE: Objection.

15 THE WITNESS: Is that not privileged in-
16 formation, your Honor, between an attorney and his
17 client.

18 THE COURT: Approach the bench.

19 (At the side bar.)

20 THE COURT: What do you say to the wit-
21 ness' objection?

22 MR. BERGER: What I am trying to elicit
23 was his state of mind as to what he had asked his
24 attorney to determine whether he was in fear of
25 being prosecuted.

1 The privilege, of course, is that of the
2 client. The attorney cannot waive the privilege,
3 but the client can waive the privilege, and I believe
4 that testifying as he has in this area he has waived
5 the privilege.
6

7 THE COURT: What do you say to that, Mr.
8 Lowe?
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2 MR. LOWE: Since he has never told anyone, to
3 my knowledge, what he said to his lawyer on that day, I
4 don't see how he could have waived the privilege as to what
5 he said that day to his lawyer.

6 MR. BERGER: He made certain testimony as
7 to what he said to his lawyer and I say that testimony
8 is not truthful. He did testify that he asked his attorney
9 questions -- I don't recall what they are -- and he
10 received certain answers and he did not assert his privi-
11 lege at that time and when the question was asked, he gave
12 an answer.

13 THE COURT: I don't recall that.

14 MR. BERGER: Yes, your Honor, he did.

15 MR. ENTIN: It was so long ago, but I think I
16 recall that, Judge.

17 MR. BERGER: He said, "What happened?" And his
18 attorney said "We will have to get in touch with them or
19 they will get in touch with us," and they did not get in
20 touch with him --

21 MR. LOWE: I think Mr. Berger is right on that
22 point, your Honor.

23 MR. ENTIN: At that point, your Honor, I
24 think it was waived.

25 MR. LOWE: I don't think so, your Honor, because

1
2 he testified to what his lawyer told him, not to what
3 he told his lawyer.

4 MR. BERGER: No, he testified as to what he
5 asked his lawyer, what his lawyer told him and what he said
6 to his lawyer, and not every communication between an
7 attorney and a client is privileged. The child was there,
8 the wife was there, there were other people there, and
9 so it is not privileged.

10 MR. LOWE: I don't think that is true,
11 because, first of all, his child was not there. His child
12 is less than a year old right now. His child was there
13 in February of 1975. That is one point. The second
14 point I have is that if he told his attorney and his wife
15 together, it is privileged anyway because of the privilege
16 of spouse --

17 MR. BERGER: He was not married to her at
18 the time.

19 MR. LOWE: I am not sure of that, but we can
20 find out.

21 Your Honor, I have been watching the witness
22 this afternoon and Mr. Berger asked him a question as to
23 whether he is on something and I am somewhat concerned that
24 his capacity is diminished at this point, and I think
25

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2 we might profit by asking him a few questions along that
3 line and I don't think it is a good idea to do it in front
4 of the jury, but if the defendants insist, I won't
5 object, but I really think we have a problem.

6 MR. BERGER: We better do it outside the
7 presence of the jury.

8 MR. ENTIN: Outside the presence of the jury.

9 MR. LOWE: His confusion about the meetings
10 Mr. Berger is asking him about, it is not that difficult,
11 because there was a long gap, from 1973 to 1975, and part
12 of that gap was because I was doing something else at
13 the time, for a long time, namely, the Mitchell prosecution,
14 but the gap was there, so he should be able to clearly
15 know the difference between the first time he came in,
16 at which time basically what happened was that after a
17 short discussion with his attorney his attorney said, "I
18 don't want him to answer any questions," and we said "Fine,
19 go home then," and not until February of 1975 did we meet
20 again, and almost two years elapsed.

21 MR. ENTIN: We have no objection to asking
22 these questions outside the presence of the jury.

23 THE COURT: I don't have any feeling that
24 that is the case. I have been watching him and he is
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2 a very clear, coherent witness, compared to some. I don't
3 see there is any evidence at all of that.
4

5 Now, Mr. Berger, as you pointed out, did not
6 make clear there were two meetings, and I don't know what
7 you are trying to bring out anyway.

8 MR. BERGER: That he believed he was under
9 investigation and subject to possible criminal prosecution
10 and that is his motivation for running to the U. S.
11 Attorney's office in February 1975 to tell the story which
12 he has never told before.

13 THE COURT: Have you brought that out? I am
14 beginning to understand what you are saying now, I think.
15 Did he go on his own to the U. S. Attorney's office in
16 February of this year?

17 MR. BERGER: Yes.

18 THE COURT: Is that right, Mr. Lowe?

19 MR. LOWE: He came as the result of a request
20 from us to come and he came without an attorney, but
21 with his wife and baby.

22 THE COURT: So it isn't so that he volunteered --

23 MR. BERGER: The information he gave --

24 THE COURT: Is new for the first time?

25 MR. BERGER: Yes. I am trying to bring out his
state of mind after he left the U. S. Attorney's office,

1 the first time, in 1973.

2
3 THE COURT: You asked him if he was afraid
4 of prosecution and he said no.

5 MR. BERGER: I want to ask him, "What did you
6 say to your attorney?" And he claims all he said was
7 hello to Mr. Lowe and I know as a reasonable man any
8 man that walks out of a U.S. Attorney's office will turn
9 to his attorney, "What did he want, what did he say, what
10 are we going to do?"

11 And he testified "My attorney told me we would
12 be contacted in the future and nothing else."

13 THE COURT: He has just invoked his attorney-
14 client privilege on that. He is sustained as to that.

15 You can go on and show there were two meetings,
16 because it certainly wasn't clear to me, one in '73,
17 where he was called in by the U. S. Attorney, and it was
18 a brief meeting -- is that right?

19 MR. LOWE: That is correct, your Honor.

20 THE COURT: He was called in in January or
21 February of this year and he gave certain information
22 relevant to this case. That is clear. Your question
23 that he feared prosecution is really superfluous. Obviously
24 anybody called to the U. S. Attorney's office to answer
25 questions is in fear of prosecution, so I don't know

1 why you are pressing that kind of inquiry.

2 We have been on this quite a while and I think
3 you should get on with it.

4 MR. ENTIN: During this break, and we have
5 been talking here, Mr. Wymb's court-appointed attorney
6 came up and had a conversation with him, either within
7 or not of the earshot of the jury.

8 (In open court.)

9 THE WITNESS: I wish to clarify something.

10 A I made a misstatement earlier. I had my dates
11 confused. Philip Klein, my attorney, was with me the
12 day that we settled the Chemical Bank suit for \$80,000
13 against me, and he was being paid for that and on that
14 day he came at no fee with me to the office of Mr. Jack
15 Lowe.

16 The second time, two years later, a year and
17 a half later, when I did come back, I had been divorced
18 and I had my current wife and my baby with me. So I
19 think that possibly might belie the confusion, your Honor.
20 It was not done intentionally.

21 THE COURT: All right. I would like to tell
22 the jury that the man who approached Mr. Wymbs while we
23 were at the side bar is Mr. Wymbs' attorney, and that is
24 why he spoke to him, and if you overheard the conversation,
25

1 initial response came from Mr. Lowe directly to me.

2 Mr. Lowe had no way of knowing Mr. Klein was my attorney.

3 Q He had no way of knowing that?

4 A Prior to a day or so before I cannot see how
5 he could. If you are going in minutes, I can't give you
6 an answer.

7 If you are going to days, I can give you an
8 answer.

9 MR. LOWE: Your Honor, it seems apparent to
10 me that the witness is talking about one meeting and
11 Mr. Berger is questioning him about another, I think.

12 A You are speaking of the first meeting that we
13 ever had with Mr. Lowe?

14 Q I had said the meeting of February 24, 1975,
15 Mr. Wymbs. Was that the first meeting you ever had with
16 Mr. Lowe?

17 A No, sir. 1975, to my knowledge, there was
18 no correspondence at all with Mr. Klein, that I know of.
19 I received something directly from Mr. Lowe, to my knowledge,
20 and Mr. Klein was no longer representing me at that time.

21 Q So you received no call from Mr. Klein in
22 February of 1975, is that correct?

23 A I don't recall any phone call, no, sir.

24 Q And he did not tell you that Mr. Lowe wanted to
25

1 see you at the U. S. Attorney's office?

2 A To my knowledge, he did not, because he wasn't
3 with me. I wish he had been.

4 Q You don't remember that?

5 A I cannot testify whether Mr. Klein called
6 Mr. Lowe or Mr. Lowe called Mr. Klein, but Mr. Klein did
7 not call me, to my knowledge.

8 THE COURT: We have been over that four times,
9 Mr. Berger. You are directed to move on, Mr. Berger,
10 to another subject.

11 Q I show you some 3500 material, Government 3500
12 material, and ask you if this refreshes your recollection.

13 MR. LOWE: Could I have the precise number of
14 the document you are referring to, Mr. Berger?

15 MR. BERGER: Yes.

16 (Handing to Mr. Lowe.)

17 (Pause.)

18 THE COURT: Are you asking the witness to
19 read that to refresh his recollection about something?

20 MR. BERGER: Yes, to refresh his recollection
21 about whether Mr. Klein contacted him and told him to
22 contact Mr. Lowe.

23 A I believe this states that Mr. Peter Shaeffer
24 called Mr. Klein, if you read it quite closely.
25

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2 Q Does this state that Mr. Klein was to contact
3 you?

4 A I believe it says that Mr. Klein was to contact
5 me, yes. It doesn't, however, say that Mr. Klein did
6 contact me, does it, sir?

7 Q Did Mr. Klein contact you?

8 A Mr. Klein did not speak to me, no, sir. Whether
9 a message was left with my wife, with someone in my house-
10 hold saying get in touch with Peter Shaeffer or Mr. Jack
11 Lowe, obviously it happened, because I got in touch with
12 them, but I did not receive any call from Mr. Klein nor
13 any correspondence from Mr. Klein nor does that document
14 indicate what you said it does.

15 Q Is that document from Mr. Peter Shaeffer to
16 Mr. John Lowe?

17 A I don't know. May I see it, sir?

18 MR. LOWE: I object.

19 THE COURT: Mr. Berger, you are directed to
20 move on to another subject. We are going to leave those
21 meetings in the U. S. Attorney's office.

22 Q Mr. Wymbs, you don't like Mr. Rodman, do you?

23 A I wouldn't say that, sir. I think he is
24 very nice. I said hello to him in the hall, and he
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Wymbs-cross

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2 said hello to me.

3 Q You dislike him?

4 A Oh, no. We have been out to dinner many times.

5 Q Have you contacted him since 1973?

6 A No, I have not.

7 Q Did you threaten his life in 1973?

8 A No, sir, sure did not.

9 Q Did you ever speak to anyone and show them two
10 shells in your hands and say, "This one is for Bill Rodman"?

11 A No, sir, i did not.

12 Q Are you sure?

13 A I am positive.

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2 Q You hold no animosity to Mr. Rodman?

3 A None whatsoever.

4 Q What is that?

5 A None whatsoever.

6 Q And you feel that the facts with which Mr.
7 Rodman has been accused is not a crime, is that correct?

8 MR. LOWE: Objection.

9 THE COURT: You asked that question before
10 and the objection is now made and the Court is going to
11 sustain it. It is for the jury to determine whether
12 Mr. Rodman committed a crime as charged, not this witness.

13 Q Mr. Rodman never came up to you and said, "I
14 am paying off someone at Value Line to get an article
15 on Power Conversion", did he?

16 A Yes, he did.

17 Q He came up to you and said that?

18 A Sure.

19 Q When did he do that?

20 A In the apartment. Not exactly in those words.
21 He said, " I have \$5000 here, this is the down payment on
22 the Value Line article," I believe, on the date -- it
23 was in a white envelope, and in cash -- I believe that
24 was the approximately --

25 MR. LOWE: The witness is apparently referring

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Wymbs-cross

1 to something he has in his hand and I think under the
2 circumstances everyone here should be advised of the fact
3 and should see what it is.
4

5 THE WITNESS: Sure.

6 MR. LOWE: Perhaps at first we ought to have
7 it marked as an exhibit of some sort. 15A would be fine.

8 MR. BERGER: I think it should be a Court
9 exhibit.

10 THE COURT: I saw the witness writing. And
11 that is the stenographer's pad he is using to write on.

12 THE WITNESS: I apologize.

13 (Government Exhibit 15A was marked for
14 identification.)

15 THE WITNESS: Your Honor, may I get a glass of
16 water?

17 THE COURT: Mr. Clerk, would you get the witness
18 a glass of water.

19 MR. BERGER: Your Honor, I just don't know
20 what it is.

21 THE COURT: The witness has been making notes
22 since he has been examined here in court, and it was in
23 view of everyone.

24 THE WITNESS: Is this illegal, your Honor?

25 THE COURT: You may make notes if you wish.

1
2 THE WITNESS: May I have them back?

3 THE COURT: Yes.

4 THE WITNESS: Thank you.

5 MR. LOWE: My apologies, your Honor. I didn't
6 know what they were and I thought the record should
7 reflect whatever they are or what is going on.

8 THE COURT: At this time we will take a ten-
9 minute recess.

10 (Jury left the courtroom.)

11 (Recess.)

12 (In open court; jury present.)

13 MR. BERGER: May I proceed, your Honor?

14 THE COURT: Yes, you may.

15 BY MR. BERGER:

16 Q Mr. Wymbs, this morning you testified that on
17 September 20th, 1972, at an apartment on 35th
18 Street and Lexington Avenue, in the presence of yourself,
19 Mr. Rodman, Mr. Zammis and Darnice Gennaro, Mr. Rodman
20 handed an envelope containing money to Miss Gennaro, is
21 that correct?

22 A I testified approximately the 20th, yes. I
23 didn't say specifically, I don't recall.

24 Q And you said that Mr. Rodman handed Miss
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Wymbs-cross

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2 Gennaro an envelope, is that correct?

3 A Yes.

4 Q And where were you in relation to Mr. Rodman
5 and Miss Gennaro at that time?

6 A Would you like a diagram of the apartment?

7 Q How many feet away from them were you?

8 A Six.

9 Q Six feet?

10 A Yes, sir.

11 Q Were they doing this secretively?

12 A No, sir.

13 Q And you testified that there was \$5000 in that
14 envelope, is that right?

15 A I testified I was told there was \$5000 in
16 that envelope.

17 Q Who told you that?

18 A Mr. Rodman.

19 Q And then what did he say to you?

20 A I asked him -- he didn't say anything. I asked
21 him what it was for.

22 Q And what did he say to you?

23 A He said it was a down payment on the Value
24 Line article.

25

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2 Q And then did you ask him another question?

3 A Roughly when would it be published.

4 Q What was his answer to that?

5 A "I don't know. I will find out as soon as
6 possible."

7 Q Do you recall that on direct testimony this
8 morning when you were questioned by Mr. Lowe, at that
9 meeting in response to one of your questions, Mr. Rodman
10 allegedly said "It is none of your business." Do you
11 remember stating that?

12 A No, I do not.

13 Q You don't remember stating that this morning?

14 A When I asked who was it going to, he said none
15 of my business. What was it for, for Value Line.

16 Q That is all I asked you was, do you recall
17 him making a statement it was none of your business?

18 A Yes, I believe so.

19 Q Where did you get the name Mr. Perlmutter?

20 A At some time during the evening the conversation
21 came up, I believe Darnice mentioned it, some Jay Perlmutter
22 was an in-between man. I couldn't say the money was --

23 Q Didn't you testify this morning that Mr. Rodman
24 gave Miss Gennaro an envelope with \$5000, that she was
25 to give to Mr. Perlmutter?

1 A I don't believe I said it in those words,
2
3 no,sir.

4 Q Do you know whether the money that you claim
5 Mr. Rodman gave Miss Gennaro was to go to Mr. Perlmutter?

6 A Of my own -- I didn't see it happen, so I
7 couldn't swear to it, sir.

8 Q At that meeting, did Mr. Rodman say this
9 money is for Mr. Perlmutter?

10 A No, he didn't.

11 Q Did Miss Gennaro say this money is for Mr.
12 Perlmutter?

13 MR. LOWE: I object to anything Miss Gennaro
14 may have said.

15 THE COURT: Sustained.

16 Q Did anyone there in the presence of Mr. Rodman
17 say that this money is for Mr. Perlmutter?

18 A Yes.

19 Q At that meeting?

20 A At that meeting, the meeting -- you know, you
21 are talking about a three hour period, sir. You are not
22 talking about a five-minute dissertation, this, that and
23 the other. You are speaking --

24 Q I am now going to go through that three-hour
25

1
2 meeting.

3 What time did you arrive at the apartment?

4 A I normally arrived at the apartment around
5 lunchtime, around 12:30 or so.

6 Q I asked you what time you arrived at the
7 apartment, not what time you normally arrived. Do you know?

8 A I do not know the minute, no, sir.

9 Q Do you know approximately when you arrived?

10 A Yes, sir. I normally arrived between 12:30
11 and 1:00 o'clock.

12 Q Where were you coming from?

13 A I was coming from the Wall Street area.

14 Q Do you know what office you were coming from?

15 A No, I do not.

16 Q Was there a meeting set up for you to come there?

17 A No, sir.

18 Q Did you call in advance?

19 A No, sir.

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Wymbs-cross

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Q How did you know someone would be there?

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A I didn't, outside there is normally somebody there. In fact, I had a key to the apartment. I'm not sure if I had it at that particular time but I had it later on.

7

Q At that particular time did you have a key to the apartment?

8

9

A I didn't have -- I said I do not recall if I had a key to the apartment at that particular time, but later on I had a key to the apartment.

10

11

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Q Who resided at that apartment?

13

A Residing at that apartment was Mr. Thomas Zammas, most evenings when he wasn't in Miami, Mr. Thomas Rodman, his girlfriend, when Mr. Zammas wasn't there, and upon occasion I stayed over during the week so I would not have to drive an hour and a half back to Jersey and come back to business the next day. Also, other people I know have resided there, other football players stayed there on certain weekends, and that's about the extent that I can recall, sir. Urie Gregarian -- no, one of the pitchers for the Dolphins stayed there some weekend.

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Q This was about September 20th?

25

A That day?

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Wymbs-cross

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Q This meeting was about September 20th, on about that date?

A Yes, sir.

Q You got there around 12:30?

A Yes, sir.

Q Who was there when you got there?

A I believe Mr. Rodman and Dennis. I believe all three were there.

Q Did you use your key to get in?

A I testified that I didn't think I had a key that early, so I knocked on the door. In fact, I had to be announced by the bellman. In fact, he keeps records so you can check with the bellman to find out what time I arrived. You had to be announced. They said who it was. One of the people would answer, "Yes, who is it? Mr. Wymbs? Let him up."

Q Did that happen that day?

A I believe it did.

Q If it did and no one was in the apartment, would you have made your trip from Wall Street to the apartment for no reason?

A No.

Q How would you have gotten in?

A I wouldn't have gotten in. I would have

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Wymbs-cross

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gone to another account in the area. I would have gone to ITT on 320 Sixth Avenue, or Rubin H. Donnelley, 711 Third or some others. It was not a wasted trip if I couldn't have gotten in.

Q What was your purpose of going to the apartment?

A To see what was happening with the stock, with stocks.

Q With stocks?

A Stocks.

Q September 20, 1972, was that a weekday?

A I do not have a calendar. If someone has one, I could give it to you specifically. I said on or about.

Q If it were a weekday, would you normally go to the apartment or would you go to the office of Oren?

A Either, depending on what was happening.

Q You testified this morning that in August you started going to the office of Oren about two times a week; by September you were there almost five times a week, is that correct?

A That's correct.

Q This meeting took place in September, Sep-

hpa

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tember 20th or thereabouts, is that correct?

A Yes.

Q Did you go to the office of I. C. Oren first?

A That particular day?

Q Yes.

A No, I did not. I don't believe so.

Q You didn't call the office either, did you?

A Call C. I, Oren?

Q Yes.

A I don't recall, sir.

Q When you say you wanted to see what the stocks were doing, what do you mean by that?

A What I mean by that is what Mr. Billy Rodman was doing with the stocks.

Q Wouldn't the best place to see what Mr. Rilly Rodman was doing with the stocks -- wouldn't that be where he works?

A Normally, yes. However, in this particular case, no. I believe these conversations took place after I -- I came there approximately 12:31. These conversations came about after 4 o'clock. What happens in a brokerage house is not what happens. For instance, what kind of deals Mr. Rodman made with other

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brokers, with other houses, like you buy this and I'll buy that, and things like this.

Q Was Mr. Rodman in the apartment when you arrived at approximately 12:30?

A I don't recall. I do not believe he was that day. I believe Mr. Zammass was and Dennis was. I believe he came in later in the day.

Q You got there at 12:30. What time does the over-the-counter market close, do you know?

A No, sir.

Q If I told you it was 4 o'clock, would you say that I am correct?

A I couldn't tell you, sir.

Q You don't know what time the over-the-counter market closes?

A I had not traded stock in two years, sir, so I couldn't tell you.

Q In 1972 what time did the over-the-counter market close?

A I don't know, sir.

Q How many stocks, different stocks, did you own between 9/71 and 9/72?

A On the over-the-counter board, maybe 10.

Q In value how much was that?

hpa

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1
2 A I have no idea, sir?

3 Q Was it over \$100,000?

4 A No, sir.

5 Q You testified that you had over \$100,000
6 in Power Conversion alone.

7 A Wasn't that a listed stock on the American
8 Exchange?

9 Q No. It was an over-the-counter stock.

10 A Okay, then I apologize. I thought it was
11 a listed stock. I know Mutual Oil was listed on the
12 American Exchange.

13 Q Do you mean that -- withdrawn.

14 You do not know that Power Conversion stock,
15 that you allegedly owned a quarter of a million dollars
16 in, is not listed on the American Exchange and is not
17 listed on the New York Exchange, is that correct?

18 A I don't believe it is.

19 Q Then it is an over-the-counter stock, is
20 it not?

21 A There are other exchanges, sir.

22 Q The National Exchange?

23 A I don't think it is listed in that either.
24 I know some of the stocks I had were.

25 Q Do you know where Power Conversion stock

1 hpa
2 was listed?

3 A No.

4 My broker took care of that. He told me
5 about the stock and he bought it.

6 Q On September 20th who was your broker?

7 A It was Nasdec, that's what it was. It
8 was listed under the Nasdec Exchange.
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Q On September 20th who was your broker?

A Who was my broker on September 20th?

Q Yes.

A Let's see. September 20th, there was Dean, Witter, there was Moore, Schley, Cameron, there was JAB Securities, Equitable Equities, and I believe that's it.

Q Oren was not your broker?

A Oren was not my steady broker, no, sir.

Q You didn't list him as a broker at all, is that correct?

A That is correct.

Q In September.

So any stock that you bought, there would be no commission going to Mr. Rodman, is that correct?

A I believe that's correct, directly.

Q And you were checking --

A Excuse me. May I answer that question?

Q You have answered it.

A No, I have not.

Q On the stocks you bought through brokerage firms you just listed, would a commission be paid to Mr. Rodman?

A Not directly. Kickbacks.

rma

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1 rma
2 MR. BERGER: Your Honor, I move to strike
3 and move for a mistrial. That was intentionally done
4 by the witness. It was done with -- I don't want to
5 make a speaking objection. May I have a side-
6 bar.

7 THE COURT: Just a minute now.

8 You say not directly. Is that what you
9 meant? You said he wasn't paid directly. Is that
10 what you meant, that he got kickbacks?

11 THE WITNESS: What I meant was that he
12 was not paid a direct commission, but he received favors
13 from other brokers, meaning that they bought some of
14 his securities. That is what I meant by it, your
15 Honor.

16 THE COURT: Why did you use the term
17 "kickbacks"?

18 THE WITNESS: Well, that is what I con-
19 sidered it to be. That is what I meant by the word,
20 your Honor.

21 THE COURT: Proceed.

22 BY MR. BERGER:

23 Q These brokerage firms you just listed --
24 there were five of them, I think --

25 A Yes, sir.

1
2 Q When did you first start trading or buying
3 or selling through those particular brokerage firms?

4 MR. LOWE: We have been through all those
5 dates and when he started with various firms before, your
6 Honor.

7 MR. BERGER: The witness just brought
8 up a very critical issue, your Honor, one of favors,
9 and I have a right at this time to go back into that
10 testimony because of that answer.

11 THE COURT: Let me hear the question,
12 Mr. Reporter.

13 (Question read.)

14 THE COURT: You are asking the witness
15 when he started trading with the various firms?

16 MR. BERGER: The ones he had named.

17 THE COURT: What is the relevance of that?

18 MR. BERGER: I would like to know whether
19 it was prior to the time he had met Mr. Rodman.

20 THE COURT: What is the relevance of it?

21 MR. BERGER: Because the witness testified
22 that Mr. Rodman received benefit by him trading through
23 those firms.

24 THE COURT: Well, you asked the question.
25 You asked the witness whether Mr. Rodman received a commission

rma

Wymbs-cross

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1 and the witness said not directly and he used the term
2 "kickback," and you asked for a mistrial or a side-bar,
3 and I asked him to explain. Now where are we going?
4

5 MR. BERGER: I want to show that it was
6 not Mr. Rodman who directed Mr. Wymbs where to trade
7 his stocks, that these were Mr. Wymbs' brokers before
8 he knew Mr. Rodman.

9 THE COURT: Well, ask him that question.
10 Were they your brokers before you knew Mr.
11 Rodman?

12 THE WITNESS: Yes, they were, your Honor.

13 THE COURT: All right, let's proceed.

14 BY MR. BERGER:

15 Q Owning as many over-the-counter stocks as
16 you did -- you testified you owned 10 of them -- you
17 testified that you owned Power Conversion to the extent
18 of a quarter of a million dollars --

19 A At one point.

20 Q Did you ever check the market at the close
21 to see what it closed at?

22 A Any particular day, sir?

23 Q Yes, any day.

24 A Yes, I did.

25 Q What time was the close?

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1 A I don't recall, sir.

2 Q Do you know what time the close is on the
3 American Exchange?
4

5 A No, sir, I don't.

6 Q Do you know what time the close is on the
7 New York Exchange?

8 A No, I don't, sir.

9 Q But you do know Mr. Rodman would generally
10 be in his office up until the time the market closed,
11 is that correct?

12 A I would assume so.

13 Q You arrived at the apartment at 12:30 and
14 you waited until Mr. Rodman got there, is that correct?

15 A That is correct.

16 Q And you made no attempt in that period of
17 time to check the market, did you?

18 A That is not true, sir.

19 Q You testified you did not call Mr. Oren,
20 Oren's office, is that correct?

21 A I testified I did not call.

22 Q Did you go to the apartment to check on your
23 stocks?

24 A Yes, I did.

25 Q You got there at 12:30?

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,
Appellee,

- against -

THOMAS ZAMMAS, Appellant.

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF

NEW YORK

ss.:

I, James A. Steele being duly sworn.
depose and say that deponent is not a party to the action, is over 18 years of age and resides at
310 W. 146th St., New York, N.Y.
That on the 26th day of November 1975 at 1 St. Andrews Plaza, New York, N.Y.

deponent served the annexed
THOMAS J. CAHILL

appendix

upon

the Attorney in this action by delivering a true copy thereof to said individual
personally. Deponent knew the person so served to be the person mentioned and described in said
papers as the herein,

Sworn to before me, this 26th
day of November 1975

Robert T. Brini

James A. Steele
JAMES A. STEELE

ROBERT T. BRINI
NOTARY PUBLIC, State of New York
No. 31 048920
Qualified in New York
Commission Expires

